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—BY—
Western Lawyers

THE COUTTS PUBLISHING COMPANY
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CALGARY, CANADA
1917

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PREFACE

WHEN questions of great importance from a legal standpoint are to be determined one should, of course, seek the advice of a careful, competent and reliable lawyer. Sometimes, however, such questions arise and must be settled promptly when a lawyer's services are not available. Moreover, in every man's experience, information is often desired which is not of sufficient importance to warrant the expense of employing counsel. Many mistakes in every day life would be avoided if a suitable work of reference were available. It is especially to fill this need that the present book has been published.

It has been in preparation for the past five years and is the result of the co-operation of many well qualified barristers.

The publishers now submit it to the public with confidence in its merits and certain both as to the need of such a work and as to the accuracy and care with which this one has been prepared.

They are, of course, conscious that errors will be found and even more that many readers may feel that some things have been omitted that should properly be included. They would ask, however, that it be kept in mind that, including the Statutes of Canada in force in the Western provinces and the various provincial statutes, there are almost twenty-five thousand pages of statutory matter which had to be read through and condensed to arrive at the result contained in this book.

They will welcome any criticism both as to what does and what does not appear in the following pages, yet they believe that what the ordinary man will most want to find is here.

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A POPULAR HAND BOOK
OF
WESTERN CANADA LAW

INTRODUCTION

THE GOVERNMENT OF CANADA.

Canada's Position in the British Empire.

THE British Empire is an organization without any parallel in history. It is stated that German statesmen believed that the shock of war would cause its component parts to break asunder. They thought that if the British government, elected by the inhabitants of Great Britain and Ireland alone, entered into a great war some of the colonies would refuse to join and might even seize the opportunity to declare themselves independent nations. The world knows now how baseless such a belief was. The bonds of empire proved strong. But when the war is over there will be much discussion as to the proper relations of the overseas parts of the empire to the mother country and to one another. Definite plans may be proposed for a change in the present relations so as to knit the parts of the empire together, so as to make it most effective in defending itself and in advancing its trade interests. For an intelligent understanding of these problems every Canadian should have a clear conception of the fundamental facts with reference to the present Canadian Constitution. In this chapter an attempt is made to state those facts concisely.

Canada is a British colony. It possesses large powers of self government but it possesses them by virtue of a statute passed by the "Imperial Parliament", i.e., the Parliament of the United Kingdom of Great Britain and Ire-

land. This statute is the "British North America Act, 1867", generally known as the B.N.A. Act. It is to be borne in mind that the Imperial Parliament is the supreme legislative authority throughout the empire, and it did not by the B.N.A. Act surrender any of its authority. It has the legal power to repeal that Act at any time. For reasons of policy and expediency it does not exercise the powers it possesses, but legally speaking it is supreme. There are no limitations on its rights of action. Canada's powers of self-government are in fact, however, limited in several ways.

(1) She cannot change the essential framework of her own constitution, i.e., the B.N.A. Act, except in certain matters where the power is given her by the Act itself.

(2) The Imperial Parliament is also a local Parliament for Great Britain and Ireland. Most of its enactments are, therefore, intended to apply to the United Kingdom only. But in some Acts it is expressly stated that their powers are to apply to the colonies as well. Such Acts are those relating to,—

(a) Naturalization of Aliens;

(b) Army and Navy, involving questions as to Canadian participation in the wars of Empire;

(c) Navigation and Shipping, involving questions as to a Canadian mercantile marine, and control over territorial waters;

(d) Copyright, involving questions of interest to authors and publishers;

(e) Fugitive offenders, involving questions of extradition;

(f) Many miscellaneous matters.

The Canadian Parliament can also pass laws relating to any or all of these subjects. But if the provisions of a Canadian Act are not consistent with the provisions of an Imperial Act on the same subject, then the Canadian Act, to the extent of such inconsistency, is void. But provisions that are not inconsistent will be enforced.

(3) The Dominion Parliament is restrained in some ways from making laws in relation to persons, property and acts beyond the territorial limits of the Dominion.

(4) Internationally one state recognizes only another state. Canada is a colony and hence a subordinate community. The Canadian government cannot therefore be nominally a party to a treaty or any intercourse with a foreign power.

(5) The Canadian government cannot appoint or remove the Governor-General.

(6) Any Act of the Canadian Parliament may be disallowed by the Crown within two years after the receipt of an authentic copy by the Imperial Secretary of State.

(7) Many Canadian law suits are finally decided by the Judicial Committee of the Privy Council, an Imperial tribunal altogether independent of the Dominion Parliament. It is doubtful if the Dominion Parliament could by its legislation prevent appeals being made to the Privy Council.

It is perhaps well to emphasize that, while as a matter of constitutional law the right of self-government in Canada is limited as above stated, nevertheless, through established usages and by the exercise of tact, mutual forbearance and goodwill when questions of difficulty arise, the machinery runs smoothly. In actual practice Canada is a self-governing country and the average citizen is no more conscious of any inferiority because of his colonial status than is, for example, a citizen of the United States. Constitutionally and in the eyes of the student of international law in reality he is a member of a great and free dominion. The internal government of Canada is, therefore, a subject of much practical importance to Canadians.

The Governor-General.

The constitutional ruler of the Dominion is the Governor-General who is appointed by the King on the advice of the Imperial Government in London, England. He holds the same position towards the Canadian Parliament

which the King holds towards the Imperial Parliament in England. He governs through a body of advisers called the Privy Council for Canada, assisted and advised by the Parliament of Canada, composed of two houses, the House of Commons and the Senate.

The power to make laws is, however, divided by the B.N.A. Act between the Parliament of Canada which is situated at Ottawa and the legislatures of the provinces situated at the respective capitals in much the same way in which the government of the United States is divided between Congress and the various state governments.

The House of Commons.

Members of the House of Commons are elected from districts called ridings, altered by Parliament from time to time.

The number of members each province may send to Parliament is ascertained as follows: Quebec always sends 65 members. Other provinces send a number bearing the same proportion to their populations as 65 bears to the population of Quebec. That is to say, any province having one half or one third of the population of Quebec sends one half or one third of 65 members, as the case may be. If any province had twice the population of Quebec it would send twice as many members.

The Senate is a body originally consisting of 72 members. The members are selected by the Governor General in Council, i.e., the Cabinet. The members were originally chosen to represent the Eastern Provinces of Canada, 24 coming from Quebec, 24 from Ontario and 24 from the Maritime Provinces. The addition to the Dominion of British Columbia and the North West Territories, out of which were created the provinces of Manitoba, Saskatchewan and Alberta, made necessary the enlargement of the size of the Senate so as to give adequate representation to the Western Provinces. Senators hold office for life or good behaviour.

Provincial Legislatures.

In each province there is a Lieutenant-Governor and a legislative assembly corresponding to the State Legislatures in the United States. These legislatures make laws upon those matters with which the province is competent to deal.

The Working of the Government.

In theory the Government of Canada is carried on by the representative of the King, the Governor-General, assisted by his advisors the Privy Council of Canada, who are in turn assisted and advised by and are responsible to the two Houses of Parliament, the House of Commons and the Senate.

In practice and in reality our government is nearly purely democratic, the government being carried on by the people through their representatives in Parliament.

The manner in which the Canadian machinery of government works is as follows:

The House of Commons is elected in the manner described in the chapter on Elections and the Franchise.

The Cabinet.

The actual executive work of the government is directed by the Cabinet, which is a committee of the Privy Council, selected from the membership of the House of Commons and Senate.

The B.N.A. Act makes no mention of parties or of the necessity of the Cabinet holding the confidence and support of a majority of the members of the House of Commons. But the Act in reality assumes the existence in Canada of those long established conventions and customs upon which the British system of Parliamentary party government revolves. In accordance with this system, whenever the Cabinet lacks the support and confidence of the majority of the members of the House of Commons, it is impossible for it to continue Government. Parliament then has to be dissolved and a new election held and new ministers selected from the ruling party in the House of Commons. This is the corner stone

of our system and differs radically from the system of government under which the United States is governed, where the President and his ministers govern practically independently of Congress. In each Province there is a provincial cabinet holding the same relation to the provincial legislature which the Dominion Cabinet bears toward the Dominion Parliament.

The chief or first member of the Dominion Cabinet is called the Prime Minister. There are 12 or 13 other members, viz., the Ministers of Justice, Militia, Customs, Finance, Interior, Trade and Commerce, Public Works, Labour, Inland Revenue, Marine and Fisheries, Agriculture, Railways and Canals, Solicitor-General, Postmaster General, Secretary of State. Each member has complete charge of all matters within his own department, but on important questions involving matters of policy he is expected to consult and obtain the support of his fellow ministers.

The Making of Laws.

The administration of the affairs of government can be carried out by the Cabinet Ministers only in accordance with the laws passed by Parliament. Parliament either originates new statutes, i.e., new laws, itself or considers and debates statutes which the Cabinet Ministers bring forward. All acts must be read and passed three times by the House of Commons and the Senate before they become law. Such acts must, before they become law, be consented to by the Governor-General and even then may be within two years of the passing disallowed by the Imperial Government in London, England. Such disallowance is of very rare occurrence.

The Senate is not an elected body and it has rejected many bills which have been passed by the House of Commons. It is not a popular branch of the Government and it is not impossible that its character and powers may be very greatly altered in future if it is not entirely done away with. In theory it is supposed to act as a balance wheel on the machinery of government and to prevent hasty and

improper legislation being passed. It has, however, hardly lived up to these ideals.

Judges.

The third branch of government is the judiciary, the Judges. All Canadian judges of all Provincial Courts and the Supreme Court of Canada are appointed by the Governor-General-in-Council on the advice of the Cabinet. They hold their positions for life or during good behaviour, but can be removed only by an address of both houses of parliament to the Governor-General.

Subjects Upon Which Parliament of Canada and Legislatures May Legislate.

Practically every subject about which laws may be passed may be dealt with by the Statutes enacted by Parliament of Canada or the provincial legislatures.

The Dominion Parliament has the power to make laws upon all subjects not clearly reserved for the provincial legislatures. And in order to remove any doubt as to certain important subjects it is expressly provided by the B.N.A. Act that the power of the Dominion Parliament shall extend to all matters relating to—1. The public debt and property. 2. The regulation of trade and commerce. 3. The raising of money by any mode or system. 4. The borrowing of money on the public credit. 5. Postal service. 6. The census and statistics. 7. Militia, Military and Naval Service and Defence. 8. The fixing of and providing for the salaries and allowances of civil and other officers of the Government of Canada. 9. Beacons, Buoys, Lighthouses and Sable Island. 10. Navigation and shipping. 11. Quarantine and the establishment and maintenance of Marine Hospitals. 12. Sea coast and inland fisheries. 13. Ferries between a Province and any British or Foreign Country or between two provinces. 14. Currency and Coinage. 15. Banking, the incorporation of banks and the issue of proper money. 16. Savings' Banks. 17. Weights and Measures. 18. Bills of exchange and promissory notes. 19. Interest. 20. Legal tender. 21. Bankruptcy and insolvency. 22. Patents of invention and discovery. 23. Copyrights. 24. Indians, and lands reserved for the Indians. 25.

Naturalization and aliens. 26. Marriage and divorce. 27. The Criminal Law, except the Constitution of Courts of Criminal jurisdiction, but including the procedure in criminal matters. 28. The establishment, maintenance and management of penitentiaries. 29. Such classes of subjects as are expressly excepted in the enumeration of the classes of subjects by this Act assigned exclusively to the Legislatures of the Provinces.

Any of the above matters are not to be deemed matters of a local or private nature assigned exclusively to the Provinces. The only subjects upon which the provincial legislatures may pass laws are the following: 1. The amendment from time to time of the Constitution of the Province, except as regards the office of Lieutenant-Governor. 2. Direct taxation within the Province in order to the raising of a revenue for provincial purposes. 3. The borrowing of money upon the sole credit of the Province. 4. The establishment and tenure of Provincial offices and the appointment and payment of Provincial officers. 5. The management and sale of the public lands belonging to the Province and of the timber and wood thereon. 6. The establishment, maintenance and management of public and reformatory prisons in and for the province. 7. The establishment, maintenance and management of hospitals, asylums, charities and eleemosynary institutions in and for the Province, other than marine hospitals. 8. Municipal institutions in the Province. 9. Shop, saloon, tavern, auctioneer and other licences in order to the raising of a revenue for Provincial, local or municipal purposes. 10. Local works and undertakings, except steamboat, railway and telegraph lines extending beyond the Province and except such works which although wholly within the Province are declared by Parliament to be for the general advantage of Canada or of two or more of the provinces. 11. The incorporation of companies with provincial objects. 12. The solemnization of marriage within the Province. 13. Property and civil rights in the Province. 14. The administration of justice within the Province, including the constitution.

maintenance and organization of provincial courts, both of civil and of criminal jurisdiction, and including the procedure in civil matters in those courts. 15. The imposition by fine, penalty or imprisonment for enforcing any law of the Province made in relation to any matter coming within any of the classes of subjects enumerated in this section. 16. Generally all matters of a merely local or private nature within the Province.

Many difficult questions arise as to whether certain laws, for example, prohibitory liquor laws, are within the scope of the powers of the Dominion Parliament or of the provincial legislatures. These questions are decided in the Courts in each Province and by the Supreme Court of Canada, but are not finally settled until they are argued before and passed upon by the Judicial Committee of the Privy Council, which is the final court of appeal for all portions of the Empire outside the British Isles, and which sits in London.

ADMINISTRATION OF ESTATES.

Executor and Administrator.

WHEN a person dies leaving property of any sort it must be handled by an executor or administrator who is called the personal representative of the deceased.

(a) Executor.

When a person dies leaving a will he is said to die testate and is known as the testator. The person whom he names in the will to administer his estate is called the executor, or, if a woman, executrix.

(b) Administrator.

When a person dies intestate (i.e., without a will), or dies leaving a will but appointing no executor the court appoints a person to administer the estate who is called the administrator or, if a woman, administratrix.

(c) Who May be Executor.

Any person whatsoever may be appointed as executor but if he be a minor, lunatic or idiot probate will be granted to his guardian.

(d) Death of Executor or Administrator.

Where there is more than one executor or administrator and one dies the office passes to those alive. When the last or sole executor or administrator dies the office passes to his executor.

(e) Acceptance and Refusal of Office.

An executor or administrator may refuse to accept the office but cannot accept in part and refuse in part.

Probate and Letters of Administration.

(a) Probate.

An executor has no authority to deal with the testator's estate until he has obtained probate of the will.

(b) Letters of Administration.

When a person has died without a will, or with a will which does not name an executor, the judge will, on the proper papers being filed with the Court, grant Letters of Administration to an administrator. These are the administrator's title and authority to deal with the de-

ceased's estate. An administrator (but not an executor) is required to furnish bonds, usually of an amount double the value of the deceased's estate, to guarantee his honest and efficient administration.

The next of kin (i.e., near relatives) of the deceased are entitled in the following order to be appointed administrator or administratrix.

(1) Husband or wife, and if none (2) Child or children, and if none (3) Grandchild or grandchildren, and if none (4) Great grand child or great grand children, and if none (5) Father, and if none (6) Mother, and if none (7) Brothers or sisters, and if none (8) Uncles, aunts, nephews, nieces, grandfathers, grandmothers, great grandfathers, great grandmothers.

Any of the next of kin may renounce his right to act in favor of some other person—often a trust company. If there are no next of kin, or all refuse to act, the Court appoints an administrator.

He must "prove" the will by filing in the proper court the original will and certain affidavits of the executor and of the witnesses of the will setting out the facts of the death of deceased, his residence before death, an inventory of his property, etc. These documents are examined by the judge and if found in order the judge directs that probate be granted. The fees of obtaining probate vary with the value of the estate. The probate is the executor's title and authority to deal with the testator's estate.

(c) **Solicitor.**

When a person dies leaving any property whatsoever, and whether with or without a will the whole matter should be placed immediately in the hands of a solicitor so that probate or letters of administration may be obtained without delay. The deceased's estate cannot be dealt with in any way until this is done.

(d) **Property Outside the Province.**

Probate or letters of administration are granted in the first instance in the province where the deceased resided. If he left property in other provinces or in a foreign coun-

try, other grants called ancillary grants of probate or administration are obtained in such other provinces or foreign country in order to enable the executor or administrator to deal with such property.

(e) Courts of Probate, &c.

The courts dealing with matters of probate or administration for each province are as follows:

Alberta. The District Court of the district in which the deceased person resided at the time of his death.

Saskatchewan. There is a Surrogate Court corresponding with each District Court the judge of the District Court being also the judge of the Surrogate Court. Such Surrogate Court of each district has control of all estates of persons residing in such district at time of death.

Manitoba. Here the Surrogate Courts which have control of all matters of probate and administration effecting the estate of persons residing within the jurisdiction of such court at time of death correspond with the County Courts of the province.

British Columbia. The Supreme Court, except in questions respecting a fund of not more than \$2,500, when the County Courts have jurisdiction.

(f) Effect of Grant.

The effect of a grant of probate or letters of administration is to vest in the executor or administrator full power to deal with the deceased's estate in the manner described below. The property which passes to the executor or administrator includes all real estate to which the deceased held title or to which he was in any way entitled, all personal effects, i.e., goods and chattels, debts due him, moneys due him in respect of contracts, but not claims for damages for personal injuries, which he could have sued upon in his lifetime. The executor or administrator may sue for any injuries to the real or personal estate of the deceased provided such injuries were done within six months of the deceased's death. If the deceased was an executor of another estate or a trustee the office devolves upon his executor or administrator.

Duties of Executors and Administrators.**(a) Inventory.**

The first duty of an executor (unless otherwise mentioned, executor will be taken to include also an administrator) is to make a complete inventory of all the property of the deceased. This inventory should be more detailed than the one filed on the application for probate or letters of administration and should set out fully every species of property of which the deceased died possessed. It should be verified by some of the beneficiaries. It should be available whenever the court or an heir calls upon the executor to produce it.

(b) Getting in Assets.

All moneys due the estate should be collected without delay. All investments of an uncertain nature should be realized upon at once as the executor will be liable for any loss due to delay in realizing upon such investments. Permanent investments on good security need not be disturbed. Perishable articles should be sold and all property liable to depreciate should be disposed of. The moneys so obtained should be placed in a bank, unless the executor has express power in the will or from the court to re-invest same on other securities.

(c) Payment of Debts.

A notice must be published under order of the court in a local newspaper notifying creditors of the estate to send in a statement of their claims verified by statutory declaration or affidavit and stating a time limit within which such creditors are required to send in their claims. Only creditors who send in claims within the time stated in such notice are entitled to be paid by the executor out of the assets of the estate. The first claims are the expenses of proving the will, funeral expenses and the costs of obtaining probate or letters of administration. Other debts are paid without preference except those due secured creditors or claims for rent or taxes. If the assets of the estate are insufficient to meet all claims the order of payment of claims would be similar to that in winding up the estate of an insolvent (see Assignment for the Benefit of

Creditors). Statute barred debts (see chapter on Limitation of Actions) may be paid out but the heirs should be consulted before such a payment is made as the estate is not legally liable for such debts. Creditors must not be preferred unless their claims are secured. Creditors filing claims against the estate which the executor does not consider should be paid should be notified that their claims will not be paid. Such creditors will then be required to bring an action against the personal representative in order to realize on their claims. The executor may retain out of the assets of the deceased a debt due to him by the deceased. Such debt may be a statute barred debt or a claim for damages for breach of contract.

(d) Payment of Legacies.

Legacies are the gifts of money or of personal property or effects to persons mentioned in the will who are called the legatees. Only after all claims against the estate filed with the executor within the proper time are paid can legacies be paid out. Legatees who are given a sum of money as a legacy payable out of the general estate are entitled to receive such legacy so long as there are any assets of the estate left after payment of debts but legatees who receive a legacy of some specific thing such as certain shares, certain articles of furniture, jewelry, etc., are not entitled to receive anything if the thing they were to receive perishes before the testator's death. A legacy is payable to the legatee at the expiration of one year after the death of the deceased. Where a person who is indebted to the estate receives a legacy he must pay out of such legacy the debt he owes the estate. Legacies payable to executors are generally, unless the will otherwise provides, payable to them in satisfaction of what they are entitled to receive for acting as such executor. Legacies bear interest after one year from the deceased's death. Care should be taken not to pay any legacies until all creditors who have properly filed their claims are paid. A creditor who has not been paid can in case the assets of the estate are all used up proceed against a legatee who has been paid a legacy for the payment of his claim.

(e) Devises of Real Estate.

Where a testator leaves a defined piece of real estate to a person or persons mentioned in the will such a gift of land is called a devise and the person receiving same a devisee. The devisee of such gift of land is entitled to receive title to same only after all creditors of the estate who have properly filed claims are paid and after all legacies charged against such land are also paid.

(f) Residue.

The will should provide for payment to a certain person called the residuary legatee of all the property real and personal of the deceased not dealt with in the will. Where no such residuary legatee is named the residue goes to the next of kin in the same way as the property of a person who has not made a will.

(g) Distribution of Estate Where no Will.

In the case of an intestate the administrator acts in the same way as an executor as to getting in the assets of the deceased's estate and the payment of creditors of the estate as above described. When all the estate is realized and out of that all creditors who have properly filed their claims have been paid the estate remaining is divided among the next of kin in the manner described below. The distribution does not require to be made for one year after death of the deceased.

Alberta.

1. In case an unmarried man or woman, or a widower or widow leaving no children or descendants of children, dies without a will, property goes to the father if living, if he is not living to the mother, if she is not living to the brothers and sisters. The children of a deceased brother or sister take the share that would have gone to their parent if living. If there is no father, mother, brother or sister the estate goes to the next of kin in equal degree.

2. In case a widower or widow dies without a will leaving one child, that child takes all. If there is more than one child the estate is divided equally between them.

As in no. 1 if a child is deceased his child or children will take the share that would have gone to him.

3. In case a married man or woman dies without a will, leaving no children, the widow or widower respectively receives all.

4 (a) In case a married man dies without a will leaving a widow and children, the widow receives one-third of the real and personal estate. The residue goes as in no. 2.

(b) In case a married man dies without a will leaving a widow, and only one child has been born to him, whether by his widow or by a former wife, the widow receives one half of his property and the child, or its legal representatives if it is dead, receives the other half.

(c) In case a woman dies without a will leaving a widower and a child or children the widower receives all her personal estate and one third of her real estate. The residue goes as in no. 2.

Manitoba and Saskatchewan.

If a man dies leaving:

(1) Wife only—all goes to the wife;

(2) Wife and children—One third to wife and rest to children equally or their descendants. If a child has died leaving descendants that child's share is divided among the descendants those in equal degree taking equally;

(3) No wife or children—All goes to father;

(4) Children but no wife—All to children in equal shares. Children of half blood and those born after father's death share equally with other children. If one of the children dies before coming of age his share goes to his brothers and sisters.

(Saskatchewan only)—A man leaving,

(5) No wife, child or grandchildren; all goes to the father and if the father is dead all goes to the mother;

(6) No father or mother;—All goes to brothers and sisters in equal shares or to the children of such brothers

and sisters if such brothers or sisters or any of them are not living.

(Manitoba only)—A man leaving;

(5 a) No father—All goes to mother and brothers and sisters in equal shares;

(6 a) No father, brothers or sisters—All goes to mother;

(6 b) No father or mother—All goes to brothers and sisters.

A married woman's property descends the same as a man's property.

British Columbia.

If a man dies leaving;

(1) Wife and children—One third goes to wife and rest to children equally or to their descendants;

(2) Wife only—One half to wife, rest to next of kin;

(3) No wife but children, all the children in equal shares;

(4) No wife or children—All to next of kin in equal degree.

(h) Next of Kin.

A person's next of kin are classified by degrees of relationship as first degree, second degree, etc. All those in first degree share equally in all the deceased's property if he dies leaving no wife or children. If there are no relatives in the first degree those of the second degree are entitled. The degrees of relationship are as follows:

First degree—Father and Mother.

Second degree—Sisters and brothers, grandfathers and grandmothers.

Third degree—Uncles and aunts, nephews and neices, great grandfathers and great grandmothers.

Fourth degree—Cousins.

Powers of Executor and Administrator.

An executor has power to sell or mortgage all personal or real estate of the deceased to realize moneys with

which to pay debts and legacies. He may also carry on the deceased's business if so ordered by the court or if the will so provides and will only be liable for improper contracts made or if he carries on the deceased's business without the court's consent or a direction in the will. He has also power to borrow money but this should only be done with the consent of the court. Property real or personal may also be sold with the consent of the court to pay those entitled in the estate of an intestate. An executor also has power to compromise or settle in any way he sees fit claims of the estate and claims against the estate.

Liabilities of Executor and Administrator.

(a) Liability for Debts, etc.

An executor is liable as such to the extent of the assets of the estate for all debts owing by the deceased at the time of his death whether by contract or otherwise but the estate is not liable for purely personal claims such as those arising from a breach of promise of marriage, or from libel, fraud, seduction, etc. No servant of the deceased can claim wages earned after the death of the deceased unless provided for by contract. Damages for injuries to property of others caused by the deceased or his servants or agents within six months of his death may be claimed by the persons whose property is so injured.

(b) Partnership Debts.

The estate of a deceased partner of a firm is liable after the creditors of the deceased have been paid for all liabilities of the partnership incurred prior to the deceased's death, unless the creditors of the partnership agree to look to the surviving partners only.

Personal Liability of Executor.

(1) On contracts. An executor is personally liable only if he contracts personally for the purchase of goods or other property or carries on the business of the deceased without authority under the will or from the court or if he promises **in writing** to answer for damages in respect of the deceased's estate out of his own property.

(2) Mismanagement of the estate. An executor is also liable where he fails to realize on assets of the estate and loss thereby occurs; if he makes payment of legacies before debts are paid; if he pays debts he should not pay, or a larger amount on a legacy than he should pay; or if he fails to recover a debt due the estate which by diligence he could have recovered. He is only liable for loss to goods of the estate where he has been very careless and negligent in respect of such goods. In all cases the executor can escape liability by showing that he acted so far as he was able and as he considered in the best interests of the estate.

Acts of Other Executors.

An executor is not liable for loss in respect of moneys received by a co-executor and for acts of co-executors unless he concurs in such acts or does not attempt to prevent the loss.

Accounting for Estate.

An executor must when ever required to do so and when the estate is finally wound up render a full and complete account of his administration of the estate. He must show all assets of every kind which have come into his hands, all moneys received on account of the estate, all moneys paid out for debts, legacies, etc., and any assets still in his hands. These accounts are reviewed, examined and passed before the judge of the Court in which probate or letters of administration were granted. For this purpose the judge appoints a day upon which the accounts are so passed and directs that all persons interested in the estate be notified and supplied with copies of the estate accounts so that they may attend before the judge if they desire.

Remuneration of Executors.

Executors are entitled to a fair sum for their care, pains and trouble in winding up the estate. This amount varies with the value of the estate and the work done and is determined by the judge upon the passing of (i.e. approval) the executor's or administrator's accounts.

Succession Duties.

Before persons are entitled to take property under a will or, where there is no will, as heirs of the intestate, they must, in most cases, pay to the province a tax, called a succession duty, which is graduated according to the net value of the property of the deceased, the value of the property of the deceased, the value of the property taken under the will, (in Alberta; the place of residence of the beneficiary, i.e., whether within or without the province) and the nearness of his or her relationship to the deceased.

While the Succession Duty Acts in the Western provinces differ from each other in minor details the provisions of the Alberta Act are substantially the same as those in force in the other provinces. Under it no succession duty is payable unless the net value of the property of the deceased exceeds \$5,000 (in Manitoba, \$4,000) and where such net value does not exceed \$25,000 no duty is payable by a resident of the province who is the husband, wife, child, son-in-law, daughter-in-law, father, mother, grandfather or grand-mother of the deceased. Gifts of property made by the deceased in contemplation of his death are to be taken into account in computing the net value of his property. Where the property of the deceased exceeds \$25,000 and is less than \$100,000 the duty payable by any beneficiary of the class mentioned above (husband, wife, etc.) is one and one half per cent. of the value of the property taken, if such beneficiary is a resident of the province, if not a resident of the province the percentage is two per cent., provided that any such person who takes more than \$50,000 worth must pay six per cent., whether he lives within the province or outside it. Relatives of the class mentioned who live outside the province must pay one per cent. even where the property of the deceased is worth between \$5,000 and \$25,000. Brothers and sisters of the deceased and other relatives other than those first mentioned must on estates of five to twenty-five thousand pay five per cent. on their share, on estates between twenty-five and one hundred thousand, six per cent., provided that

if the share be more than \$50,000 the percentage increases to seven and one half. All persons other than the two classes of relatives mentioned must pay ten per cent. on their shares of estates between five and twenty-five thousand, and larger percentages where the estate is worth more. Larger percentages are provided for in all cases of larger estates than those mentioned. Thus on an estate of \$1,000,000 a child or wife must, even if resident in the province, pay nine per cent. of his or her share, and any beneficiary who is not related to the deceased must pay fifteen per cent.

No letters of probate or administration can be obtained until succession duties are paid to the Provincial Treasurer or a satisfactory bond is given him to secure the payment thereof. Unless the duties are paid within six months (in Saskatchewan, eighteen months) of the death of the deceased interest will be charged thereon, and the person liable may be sued for the duty.

AFFIDAVITS AND DECLARATIONS

Affidavits.

AN affidavit is a sworn statement in writing in Judicial and extra-Judicial matters made by one or more persons called the deponent or deponents before a notary public, a commissioner for taking oaths, a Judge, or justice of the peace, or other person so authorized. The affidavit is headed in the cause or matter in which it is used and the statements contained in it are divided into separate numbered paragraphs. The affidavit must be in the first person and the person or persons making same must swear as to the truth of the statements contained therein before the officer taking the oath. The deponent may usually state facts in the affidavit which he does not know of his own knowledge but upon information and belief.

The closing part of an affidavit in which the place and date of the swearing of the affidavit are referred to is called the Jurat.

Any alterations in the affidavit, words written between lines or erasures, must be initialed before the officer taking the affidavit at the time of the swearing of the affidavit.

Any affidavits to be used outside the province in which they are sworn must be made before a Notary Public in the province in which they are sworn.

Statutory Declarations.

In all matters not before a court or not to be used in court proceedings, where it is desired to have certain facts verified, what is known as a statutory declaration is used. Such statutory declarations are similar in form to affidavits but instead of the person making the declaration stating that they are making the same on oath they say that they "do solemnly declare" that the facts of the matter are as follows, etc.

Such declarations are made before the same officers who take affidavits and the same rules as to paragraphing and alterations, etc., apply as in the case of affidavits.

False Statements in Affidavits, and Statutory Declarations.

Any person swearing any affidavit or making any Statutory Declaration knowing the facts stated therein to be false or incorrect is guilty of the crime of perjury and is liable, if found guilty, to serve a term of imprisonment of 14 years.

Forms.

Simple forms of affidavits and Statutory Declarations may be obtained from a stationer.

AGENTS

Who Are Agents.

CORPORATIONS and other companies not being living natural persons act only through natural persons. Persons in business as individuals or as partnerships could transact only a very small amount of business if they had to do every act connected with their business transactions themselves and could not authorize other persons to act for them. For this reason the law permits individuals, partnerships and companies, municipal corporations and any other properly organized body recognized by the law to enter into binding transactions through persons styled agents. The person, whether individual, partnership or company, for whom such agent acts, is called in law the Principal.

Who May Be Agents.

Any person of sound mind may be an agent. This includes infants, i.e., persons under 21 years of age.

Who May Be Principals And Appoint Agents.

Only persons who may enter into contracts can appoint agents (See Contracts and Agreements).

How Agents are Appointed.

(a) Under Seal.

Where the principal wishes the agent to contract for him under seal, i.e., to sign and execute for the principal agreements under seal, such agent must be appointed by a special appointment under seal, called a Power of Attorney (See chapter on Land Titles for Power of Attorney to deal with land).

(b) By Writing.

All other agents are appointed either by an agreement entered into between the principal and agent either in writing or by word of mouth or by the principal allowing another to act for him as agent. It is always very much more satisfactory to have the agency agreement in writing. In Alberta no agent can enforce any commission for the sale of land unless the agreement to pay the commission is in writing signed by the principal.

Although a principal may not directly authorize another to act for him as agent, nevertheless, if he by his words or acts leads others to believe that a certain person is his agent, or if he ratifies what some person has done pretending to act for him the principal will be held bound although he may not have authorized the agent to do such acts in the first place.

What Acts May be Done by Agents.

An agent may be authorized to perform any act or enter into any transaction which the principal himself can do, except that no person can delegate another to do an act or duty which the principal himself must do personally. No agent can do what the principal cannot do.

Classes of Agents.

(a) General Agents.

Are those who have authority to do any acts for another in the usual course of the business in which the principal is engaged, for instance, one partner is the general agent for the other partners for any act done by him in the usual course of the Partnership business. Other general agents are the managers of a business, firm, etc., or in fact any agency in which the agent has a general authority to act in all matters connected with the business.

(b) Special Agents.

These are agents who have authority to act for the principal in some particular transaction, as the sale of a house, farm, threshing outfit, etc. These have authority and can bind their principals only for acts done in connection with that particular transaction.

Authority of Different Kinds of Agents.

(a) Factors.

These are agents who do not buy goods outright but are entrusted with them for sale, such as implement agents, farm machinery and threshing machine agents, automobile agents, etc. Such agents have authority to sell the goods in their own name upon such terms as to credit, etc., as they see fit, to warrant such goods and to receive payment for the goods in cash, but not unless

otherwise authorized in goods. They have not unless specially authorized authority to appoint sub-agents or to exchange goods or mortgage or pledge the goods in their charge.

(b) Brokers.

These are agents who buy and sell and negotiate agreements to buy and sell goods, shares in companies and debentures, etc., which goods, etc., they do not themselves handle, such as stock brokers, real estate brokers, etc.

Brokers have authority to sign written agreements for their principals, arrange the terms of payment of a transaction and receive payment in cash for the principal.

Brokers have no authority, unless the principal specially gives it, to contract for the principal in their own name, to cancel the principal's contracts, to appoint sub-agents, to sell shares in companies on credit or to receive payment in anything but cash.

(c) Auctioneers.

Are agents who sell goods by public auction. They have authority to sign a contract for the principal, binding him. For instance, when selling land or goods the auctioneer upon bringing down the hammer makes a memorandum of the sale to the bidder. Such memorandum binds both seller and buyer, because the auctioneer is really acting as agent for both.

Auctioneers have no authority, unless specially authorized by the principal, to cancel a sale made or to warrant the goods sold or to take a note in payment or to sign the vendor's name to any contract except the contract for sale or to sell by private sale or to deliver goods without payment.

(d) Solicitors (Lawyers).

Have authority to receive payment of a debt for which they were instructed to sue, to receive payment in respect of any agreement between the lawyer's client and another, to settle actions entrusted to them, to enter into an agreement in reference to the suit or to settle an action after

judgment. Solicitors have no authority, until authorized by the client, to commence a suit or to receive the price of property sold unless the deed is produced, or to take special journeys on behalf of the client.

Sub-Agents.

An agent cannot employ a sub-agent to do the acts his principal has instructed him to do, unless the principal expressly permits the agent to employ a sub-agent or it is understood that sub-agents are to be appointed or the agent can do the work required of him only through a sub-agent. Where an agent employs a sub-agent without the principal's express or implied authority, the principal is not liable for the sub-agent's acts.

Whether the sub-agent is or is not appointed by the authority of the principal, the principal does not become liable to the sub-agent for commissions unless the principal expressly agrees to become so liable.

Duties of Agents.

(a) Honesty, etc.

The agent must obey the principal's instructions, act in good faith and in his employer's best interests.

(b) Accounts.

The agent must keep his own, his principal's and other people's accounts separate and account and pay over to his principal moneys he receives of the principal.

(c) Care, Skill, etc.

The agent must use such care, skill and diligence in his principal's affairs as he would in his own personal affairs.

(d) Duty to Disclose Personal Interests and Account For All Profits He Himself Makes.

Where in any transaction which the agent enters into for his principal, the agent has some personal interest in addition to the commission, etc. the principal pays him, he must disclose all the facts of his personal interest and if he makes any personal profit on the transaction, the principal may recover it from him or cancel the transaction. For instance, if the agent pretends another person is sel-

ling to the principal when he is himself the seller, the principal is not bound by the transaction, and if the agent makes a special profit on such a sale the principal can recover it back from him. In any transaction with his principal, the agent must disclose all the facts he knows about the transaction.

(e) **Using Information.**

An agent must not use the information he acquires as agent to the detriment of his principal.

Liabilities of Agents to Principals.

(a) **In Respect of Contracts Entered Into for Principal.**

Unless an agent acts for a principal whose name he does not disclose to the person with whom he enters into the contract, or pretends to act for himself although acting for a principal, he is not himself liable on transactions into which he enters, that is, where he transacts business for a principal and the person with whom he contracts knows he is only an agent for the person named as principal, the agent incurs no personal liability at all.

(b) **In Respect of Loss Suffered by the Principal Through His Acts.**

The agent will only be liable when he causes loss to his principal where the loss is caused by the agent's imprudence, carelessness or wilful disobedience of instructions or failure to do his duty. He will not be liable where he has exercised care and has followed his principal's instructions to the best of his ability. In any case he will only be liable for the actual loss suffered by the principal arising from his acts.

(c) **In Respect of Bribes.**

An agent who accepts a bribe to act contrary to his course of duty is liable to pay the bribe to his principal with interest, to pay the principal any loss suffered by reason of such bribe, to forfeit his commission and to be dismissed from service. The person bribing is liable with the agent for loss and to have his contract set aside.

(d) **In Respect of Sub-Agents.**

An agent is liable to his principal for all moneys received by sub-agents appointed by the agent and for all

damage caused to the principal by the acts of the sub-agents.

Rights of Agents.

(a) Remuneration.

The principal is liable to pay the agent the remuneration agreed upon in the agency agreement. Where no particular remuneration is agreed upon, the agent should receive a reasonable reward.

(b) Commission.

Where the services of the agent are to be paid for by a commission based upon the price of the article bought or sold, he is only entitled to the commission where he does all he was required to do by the contract between himself and his principal, and the sale or purchase is a result of what he does. Even though the transaction afterwards falls through, through no fault of the agent, and the principal acquires no benefit, the agent is still entitled to his commission, if he does all he is expected to do, and he is so entitled even though the transaction is completed and closed by another person. Where the principal wrongfully refuses to complete the transaction the agent is entitled to receive from the principal an amount of money equivalent to the commission he would have earned had the transaction gone through.

(c) An Agent Has No Right to Remuneration or Commission in the Following Cases.

--
(a) Where the agent was not authorized to act.

(b) Where the transaction in respect of which the commission is earned is unlawful, such as a wagering or lottery transaction.

(c) Where the agent makes a secret profit or earns some benefit unknown to his principal.

(d) Where the agent disobeys instructions or fails to perform his duty.

(e) Where through the neglect or carelessness of the agent the principal derives no benefit from the transaction.

(d) **Losses and Expenses.**

An agent has a right to be re-imbursed his expenses and losses incurred by him in connection with his duties as agent, but he has no right to recover such losses and expenses in cases where he has no right to commission.

(e) **Lien.**

In certain cases, viz; where the agent holds goods in the principal's right and no other person has a right to the goods so held by the agent, the agent may generally hold the goods for payment of his commission, expenses, etc.

How Far Agent Binds His Principal.

(a) **Where Principal Bound.**

The principal is bound by all acts of the agent which the agent does in the usual course of the business the agent is employed to transact even though the agent acted beyond his authority, so long as the person he deals with does not know he has no authority.

(b) **Principal Not Bound.**

The principal is not bound, where the agent acts outside of the usual course of the business in which he is employed, unless the principal authorized such act, or acts without authority and the person dealing with him knows he has no authority.

(c) **Agent Disposing of Goods, etc.**

Where goods held by an agent or bills or notes in his possession are sold or mortgaged or pledged or otherwise disposed of by the agent the person receiving such goods or advancing money on them by way of mortgage acquires a good title unless he knows the agent had no authority from his principal to dispose of the goods.

(d) **Agent Signing Notes, etc.**

The principal is only liable for notes made by the agent on his behalf or bills accepted where the bill of exchange is drawn on the principal and accepted by the agent, or where the note is signed on his behalf.

(e) **Agent Contracting as Principal.**

Where the agent contracts with another person as though, he, the agent, were the real principal, or although he advises the other person that he is an agent of a principal but does not disclose the real principal's name, both principal and agent are liable. But where the person dealt with knows who the principal is but gives credit to the agent, the agent only is liable.

(f) **Fraud, etc., of Agent.**

A principal and agent are bound by all fraudulent representations and other false statements made with or without the intent to defraud by the agent in the course of the business in which he is employed, even though such fraudulent statements were not authorized by the principal.

(g) **Payments Made to Agents.**

Persons paying agents in respect of debts due the principal do so at their peril as such payments do not discharge a debt due by such persons to the principal unless such person has been led to believe that the agent is the real principal or that the agent has been authorized by the principal to receive payment.

(h) **Agents' Wrongs.**

The principal is liable to all persons suffering loss by the wrongful or negligent acts of the agent done in the course of the business in which the agent is employed, even though the agent was not authorized to do such acts by the principal. The agent is also liable in respect of such losses.

(i) **Money, etc., Received.**

The principal and agent are both liable to persons who deliver to the agent money or goods in the course of the business in which the agent is employed, if such goods, etc., are misapplied.

(j) **Notice to Agent.**

Where the principal is required to be notified of some fact notice to the agent is good notice to the principal.

How Far Agent Himself Liable.**(a) When Agent Not Liable.**

When an agent contracts merely as an agent for a principal who is named in the contract, the agent is not liable where he does not bind himself personally.

(b) When Agent Liable.

The agent is liable when although he contracts as agent he binds himself personally or when he contracts as agent for a principal whom he does not name, or when although he acts on behalf of a principal he contracts as though he were the real principal. He is also liable on any contract under seal, even though he contracts only as an agent. He is also liable when he contracts without any authority from a principal or no principal exists.

(c) Liability on Bills, Notes, etc.

The agent is liable on bills drawn on him and signed by him or on notes signed by him personally, but is not liable on bills drawn on the principal, although signed by him, or notes signed by him as agent of the principal.

(d) Holding Himself Out as Agent.

Where a person having no authority to act holds himself out as an agent, such person is liable to any person suffering damage by reason of his being so induced to enter into a contract.

(e) To Sue on Contracts.

An agent has a right to sue on all contracts on which he is personally liable.

(f) Wrongful Acts.

An agent is personally liable for all losses he causes to persons through his carelessness, neglect or wrongdoing and for all misstatements of fact made by him unless he believed such false statements were true. He is not liable for wrongful acts or losses caused by sub-agents unless he authorized them.

Termination of Agency.

An agency is terminated as follows:

(a) If it is given for a particular transaction, by the completion of that transaction.

(b) If given for a limited period, by the expiration of that period.

(c) By the agency becoming unlawful.

(d) By principal and agent agreeing to terminate the agency.

(e) By the death, lunacy or insolvency of the principal or agent.

(f) By the principal or agent notifying the other that the agency is revoked.

Where the agency's agreement is under seal, or the agency is for the purpose of securing some interest to the agent, or where the agent gives value for the agency or incurs any expense or liability under the agency or becomes liable to other persons on contracts on behalf of the principal the agency cannot be terminated while the agent has not received the consideration he is entitled to or while the agent continues liable on obligations entered into by him on behalf of the principal.

ANIMALS

FOR a more complete discussion of the laws relating to Domestic Animals see the chapter on Live Stock Laws and for those relating to Wild Animals see the chapter on Game Laws.

(a) Domestic Animals are all animals which by habit or training live in association with man, as cattle, horses, sheep, dogs, etc.

(b) Wild Animals are those not domesticated, as deer, foxes, rabbits, etc.

Property in Animals.

(1) Sale and Ownership of Domestic Animals.

These are owned, bought and sold and transferred as are any other chattels or goods. Manitoba has, however, a special law governing the purchase of cows and heifers by settlers.

(2) Ownership of Wild Animals.

Such animals in their wild state and not tamed or held by any person in any way are not the property of any one. But when caught and tamed or held in any way they are the property of the person so holding them until they break away and live in and follow their natural haunts when they cease to be the property of such person. The owner of land has a property in the young of wild animals, birds and fowls before they are old enough to run or fly away. Also animals killed on any person's land belong to the proprietor of the land whether killed by himself or his agents or any one else.

ARBITRATION

Introductory.

INSTEAD of taking their differences before a court of law parties often agree to settle present or future differences or disputes by referring the matter in dispute to an arbitrator or arbitrators who hear the matter in much the same way as a case is tried in court and make a finding called an award which is binding upon all parties.

What Matters May be Referred to Arbitration.

Practically all matters which the parties can settle between themselves can be arbitrated. But arbitrators cannot decide a point of law or make a finding as to whether or not, for example, a marriage contract is legal or valid. These matters the parties could not settle between themselves. But all disputes as to moneys due under contracts or debts, damages for non-performing of contracts or for wrongs or the construction of line fences and boundaries, damages payable by railways for lands injured or compensation for land taken, etc., may be referred to arbitration.

How Matters are Referred to Arbitration.

(a) By Agreement.

A matter now in dispute or which the parties to some contract consider may in the future be in dispute may be

referred to arbitration by an agreement to that effect. Such an agreement is called a submission. Any person who may contract may be a party to such a submission (see Contract). The submission agreement is binding on the parties making it and their assigns. Such agreement to submit must be in writing and be executed by the persons making it.

(b) By Order of Court.

Sometimes questions brought before the courts involve lengthy investigation, or are wholly matters of account. These and similar matters are frequently referred by the court to an arbitrator or referee to try out and thereafter make an award as in other arbitrations.

(c) By Act of Parliament.

Certain acts of Parliament require that certain matters must be settled by arbitration, for example, the Railway Acts of the Dominion and the Provinces require that the amount payable to land owners for lands taken by the railways and damage to the adjoining lands be settled by arbitration. Similarly, disputes as to amounts payable by fire insurance companies upon losses must first be referred to arbitration for settlement.

Effect of Arbitration Agreement.

Where parties have agreed to arbitrate neither one may enter or carry on an action at law respecting the dispute. If they do so their action will be stayed until the arbitration is completed.

What Agreement Contains.

The agreement to arbitrate should be prepared by a solicitor. It contains a recital of the matters in dispute, that such matters are referred to the arbitration of certain named person or persons as arbitrators, provisions for appointing new arbitrators, that the parties agree to abide by the arbitrators' award and not to bring any action upon the matter in dispute. The agreement should also provide that the arbitration is upon the terms and conditions contained in the arbitration Act of the province in which the arbitration is to take place. These acts contain pro-

visions which are declared to be a part of the agreement unless some other provision is made in the agreement. These provisions provide that unless the agreement otherwise stipulates there shall only be one arbitrator, called a sole arbitrator and when two arbitrators are appointed the Acts provide for the method of appointing a third called the umpire. The Acts also provide for the time and manner in which the arbitrators shall make their award, the examination of witnesses, production of papers, etc.

Arbitrators.

The parties may appoint whomever they please as arbitrator. Where the agreement does not otherwise provide, the reference is to be before a single or sole arbitrator. Where the agreement provides for three arbitrators one is appointed by each party, and the third called the umpire by the parties or by the two arbitrators appointed or if they fail to so appoint the third arbitrator the court may do so. Vacancies are filled either by another appointed by the parties or if they fail to do so by the court. The court may remove the arbitrators for misconduct.

Conduct of Arbitration.

The arbitrators appointed in the agreement, after consulting the convenience of the parties whose matter is in dispute, fix a time and place for the arbitration and notify both parties. If one party does not attend at the arbitration after due notice, the arbitrators may proceed with the arbitration. In all other cases both parties must be present at the arbitration. The parties to the dispute may either handle their own case or employ a solicitor to handle it for them. Witnesses, if any, are called by the parties to the dispute and their evidence given before the arbitrators, and documents are produced and made part of the case, in practically the same way as in ordinary cases in court, the arbitrators having the same powers as the judge to call witnesses, adjourn the hearing, etc. The third arbitrator is called to give a decision only on matters upon which the two arbitrators do not agree.

Award.

Whatever decision the arbitrators arrive at is set out and contained in a document called the award. The award is usually equivalent to a judgment of a court and both parties to the arbitration are bound by it in the same way as by a judgment. A time may be fixed within which the arbitrators must make their award but usually this is not the case. The award should deal with and settle all matters in dispute.

Costs, etc.

The costs of the arbitration including remunerations of arbitrators are fixed by the arbitration acts of each province.

Enforcing Award.

If the party against whom the award is made refuses to comply with it by paying the amount directed to be paid or doing what is required to be done, the party in whose favour the award is made may enforce the same by an action in the court.

Setting Aside or Varying the Award.

If either party is dissatisfied with the award he may apply to the court to have it set aside or referred back to the arbitrators for further consideration.

ASSIGNMENTS FOR THE BENEFIT OF CREDITORS AND FRAUDULENT ASSIGNMENTS

ASSIGNMENTS FOR THE BENEFIT OF CREDITORS

Bankruptcy.

BANKRUPTCY law is one whereby a debtor who is unable to pay his debts in full has his estate and business wound up by special proceedings, known as Proceedings in Bankruptcy, being thereupon declared a bankrupt and being completely discharged from his debts. In Canada there is no Bankruptcy law. Such a law can be passed only by the Parliament of Canada and not by the Provinces.

Assignments.

No Canadian Bankruptcy law having been passed, each Province has passed statutes dealing with voluntary assignments for the benefit of creditors, providing a method of winding-up a business carried on by an individual or a partnership in any case where either the person carrying on the business is insolvent or where for any other reason it is desirable that the creditors should share rateably.

The winding-up, liquidation or administration of the business assigned is carried on by a special officer appointed for that purpose, called the Assignee. It is his duty to call in, sell and dispose of all assets of the firm and pay the same over to the creditors in the proportions to which they are entitled.

Whenever the assignee does not realize out of the business sufficient to meet the creditors' claims, as is generally the case, creditors receive only a proportion of their claims. The insolvent individual or partnership is still liable to creditors for the proportion of the creditors' claims still unpaid, unless the creditors completely discharge the debtor who assigns. Such debts may of course become outlawed when the limitation time has run within which such debts must be sued on. (See Limitation of Actions.)

The following provisions respecting Assignments for the benefit of Creditors apply, except where otherwise mentioned, to the four Western Provinces. The debtor making the assignment will be referred to throughout as the debtor.

Official Assignees.

In each Province Official Assignees are appointed by the respective Provincial Governments, to whom all assignments for the benefit of creditors must be made, being void if made to any other person. In Manitoba the majority in number and value of claims of creditors may appoint another assignee. In Alberta a Judge upon application may remove the Official Assignee and appoint a new As-

signee. In British Columbia an assignment may be made to any person as assignee, but at the first meeting of creditors after the assignment, the creditors may by resolution appoint a new assignee, or any Judge may upon application made by a creditor, dismiss the assignee appointed and appoint a new assignee.

Assignment is Voluntary.

The assignment must always be voluntary, that is it must be the free will act of the debtor. Creditors cannot legally compel a debtor to make an assignment, as they can in countries where there is a Bankruptcy Law. But once the debtor notifies or communicates to any creditors his intention of making an assignment, he cannot recall it and can be forced by the creditors to make such an assignment.

Partners.

One partner cannot compel the firm to assign. All partners must consent to such an assignment.

Companies.

Limited companies may make an assignment for the benefit of creditors upon obtaining the consent of the shareholders at a shareholders' meeting (See chapter on Companies).

Good Faith.

The assignment must be made in accordance with the provisions of the Acts of the Province in which the assignment takes place. Any attempt to prefer any particular creditor, or to give a benefit to the person making it is void as a fraudulent assignment.

Form of Assignment.

The assignment must be in writing and executed as other documents are executed. The debtor's property assigned should be described as follows: "All my personal property and all my real estate, credits and effects, which may be seized and sold under execution."

Registration.

A duplicate copy of the assignment must within ten days (In British Columbia twenty-one days) of the date of execution be registered in the office where Chattel Mortgages are registered in the Judicial District where the debtor lives, or, if he is not a resident of the Province, in such office of the Judicial District where the goods are situated, another copy must also be registered within ten days of execution in the Land Titles Office of the Land Registration District in which the debtor's lands, if he has any, are situated. In British Columbia a copy of the assignment is registered in the Land Registry Office of the district in which the debtor's lands are situated.

Publication of Notice.

A notice of the assignment must be published at least once in the Provincial Gazette and at least twice in a newspaper published in the Judicial District in which the goods are situated. Very heavy penalties may be incurred for omission either to register the assignment as provided or to publish the notice.

Creditors Garnisheeing, etc.

Creditors who have garnisheered moneys of the debtor prior to the making of the assignment, or who have seized and sold under execution goods of the debtor prior to the assignment are only entitled to hold the moneys realized if such moneys have been actually received by them, otherwise the assignee is entitled to the moneys garnisheered or the goods seized but the creditor so garnisheeing or seizing has a first claim for his costs.

What Assignment Includes.

The effect of the assignment is to transfer to the assignee all property including real estate, goods, money in bank, shares of stock, etc., of the debtor wherever situated. In British Columbia payments made by the debtor, except for wages, rent, taxes or water rates, within ten days before the assignment are void.

Exemptions.

The debtor may hold back all exemptions to which he is entitled at law (See Exemptions from seizure for

Debt) or may allow the exemptions to be sold and claim the proceeds of the exemptions, but unless at the time of the assignment he makes claim to the exemptions, he is probably not afterwards entitled to claim any exemptions.

Meetings of Creditors.

(a) First Meeting.

The Official Assignee must within five days of the date of the assignment call a meeting of all the creditors of the debtor by sending by registered mail to each creditor a notice calling the meeting, which must be held within 12 days, in British Columbia 14 days, of the mailing of the notice at the place of meeting stated in the notice. The notice must also be published in the Gazette. The meeting is called to appoint inspectors and consider means of disposing of the estate.

(b) Other Meetings.

A majority of creditors who have duly proved claims of \$100 or upwards may compel the assignee to call a meeting of the creditors. The assignee must, within two days of the demand by creditors for the meeting, send out notices similar to the above mentioned notice, calling a meeting to be held twelve days after the sending out of the notice. A heavy penalty is payable by the assignee for failure to call such a meeting. If a sufficient number of creditors do not attend a meeting, directions may be given by a Judge as to the disposal of the debtor's estate.

(c) Creditors' Votes.

Creditors are entitled to vote as follows.

(Alberta, Saskatchewan and Manitoba)

For claims of \$100 up to \$ 200	1	Vote
“ “ “ 200 “ 500	2	“
“ “ “ 500 “ 1000	3	“
Every additional \$1,000	1	“

(British Columbia)

For claims of \$ 25 up to \$ 100	1	Vote
" " " 100 " 300	2	"
" " " 300 " 600	3	"
" " " 600 " 1000	4	"
Every additional \$1,000	1	"

Creditors' Claims.**(a) Filing Claims.**

All creditors must within a reasonable time after receiving notice of the assignment and the address of the assignee, file with the assignee particulars of their claims, verified by a statutory declaration. If not so filed the assignee may, on three days' notice to the creditors, apply to the Judge to fix a time within which the creditors must file their claims. Upon their failing to do so their claims are barred.

(b) Claims Not Due.

May be proved but interest not earned will be deducted.

(c) Set Off.

The assignee may set off against any creditor's claim any other proper claim the debtor has against the creditor.

(d) Partnership Debts.

Where an assignment is made by a partnership, debts due by the firm are satisfied first out of partnership property, and personal debts of partners first out of the partner's private property, and only when either of these fail can the assignee resort to the property of the partner or firm as the case may be.

(e) Wages.

Employees of the debtor are entitled to wages or salary for a period not exceeding three months actually earned by them prior to the assignment, before other creditors are paid. Wages for over that amount rank to the extent of the excess over three months on the same basis as other claims. In Alberta wages are payable within one

month after assignment if there are sufficient funds on hand.

Assignee's Fees.

These are fixed by the creditors after the first dividend sheet has been prepared, and if not so fixed the assignee may deduct from the last dividend sheet an amount not exceeding five per cent. Inspectors may receive a fee not in any case to exceed \$25.00.

Secured Creditors.

All creditors are required to state in their claims filed whether or not they hold any security for their claims. Such security may be notes or other commercial paper assigned by the debtor to the creditor as collateral security, or a Chattel Mortgage, Land Mortgage, Lien Note, etc. In any case a creditor holding such security is bound to pursue one of the following courses:

(a) He may assign over to the assignee the security if the assignee so desires at the value the creditor places upon it plus an additional 10 per cent of such value. The balance, if any, is paid in the course of the liquidation. He may then send in his claim for the difference between the amount the assignee pays him for his security and the amount the debtor owes him, and will rank as an ordinary creditor for that amount.

(b) He may retain his security putting a value on it and send in his claim for the difference between the value so placed on his security and the amount the debtor owes him. He will receive from the debtor's estate his proportionate share to that extent. If the secured creditor does not value his security he may be required by a Judge either to do so within a certain time or not share in the estate.

Assignee Contesting Creditors' Claim.

If the assignee disputes the creditor's claim, he is required to notify the creditor to that effect and the creditor must within a certain time thereafter commence action for his claim against the assignee. It may happen that the

assignee is satisfied with the claim, but the debtor is not. In such a case a Judge decides whether or not the creditor will have to bring an action.

Dividends.

As large a dividend as possible must be paid to creditors within six months after the assignment, and at the end of every six months thereafter, or at such shorter time as may be required by the inspectors. The assignee must first by letter send out a notice of the dividend to all creditors and enclose a statement of receipts and disbursements together with a copy of the dividend sheet and eight days thereafter pay to all creditors the dividend.

Payment of Claims.

After all the assets of the debtor have been realized upon the proceeds are distributed as follows:

(1) Rent and taxes if the debtor's goods have been seized under distress. In Alberta the landlord cannot dis-train after the goods have become vested in the assignee, but he has a preferential claim for arrears of rent but not for an amount exceeding six months' rent where the lease is for one year or more and for a smaller amount where the lease is for a shorter term or at will.

(2) Three months wages or salary of employees as above mentioned.

(3) Costs of any creditor who had issued execution and seized goods of the debtor, or who had garnisheed moneys of the debtor.

(4) All general creditors *pro rata*, i.e., share and share alike.

No claims for damages are payable under an assignment except where the claimant had secured a Judgment. Claims must be for debt.

Examination of Debtor.

The debtor may be examined on oath concerning his affairs and matters connected with the business assigned.

FRAUDULENT AND PREFERENTIAL ASSIGNMENTS

Assignments for the benefit of creditors are usually made when a debtor is insolvent. This of course is not always the case. Assignments are sometimes made when the debtor is quite solvent, for the purpose of securing to each creditor an equal share of the debtor's assets in proportion to their claims.

There are other assignments of quite a different character, the purpose of which is either to put certain property out of reach of existing creditors or to give one or more creditors a preference over other creditors by assigning to such preferred creditors an amount of property more than they could hope to receive in a distribution under an assignment for the benefit of creditors. Both of such assignments are illegal and void.

Voluntary Conveyances (Gifts)

Any conveyance, transfer or assignment of any property, lands, goods, by any person to another person in the way of a gift, i.e., without any value being given in return, is invalid and void, if at the time such person so transfers his property he is either unable to pay all his debts in full, or the gift of such property does not leave him sufficient other property with which to pay his debts in full, and it makes no difference whether the person receiving the gift is a wife, mother, father, child or other relative of the giver or whether or not the receiver of the gift knew the giver was insolvent. Any such gifts are absolutely valid and good if the giver is still in a position to pay all of his debts in full after he has made the gift.

Conveyance for Value.

These conveyances stand on a different footing from gifts. So long as fair value is given for the property conveyed, they are good. They are only invalid where they are of the class mentioned in the next paragraph or where the person to whom the property is conveyed for value is himself guilty of fraud, as well as the debtor, and knows when having the debtor's property transferred to him that the debtor is unable to pay his debts and that the effect of

such conveyance of property will not leave the debtor sufficient to pay his debts.

Preferences to Creditors.

Conveyances and transfers of property, even for value, by insolvent persons to one or more of their creditors resulting in those particular creditors receiving a preference, that is more than they would receive in an equal distribution of the debtor's property among all of the creditors, are void and of no effect, provided the creditors commence an action to set aside such transfer or conveyance within 60 days after such transfer, or such conveyances are made within 60 days before the debtor makes an assignment for the benefit of creditors.

Sale to Creditors.

Sales of property by an insolvent debtor to one or more of his creditors are valid if fair value is given by the creditor, or the creditor gives up to the debtor some valuable security he holds, in short, such sale or transfer for value by persons in insolvent circumstances to creditors are good if the debtor is worth as much after the transfer as before the transfer.

Recovering Property Fraudulently transferred.

The assignee in an assignment for the benefit of creditors has an exclusive right to recover such property wrongfully transferred by the debtor. If he refuses, one of the creditors may do so and may follow the property transferred and recover it from the person to whom it was fraudulently transferred, or if the latter has sold it the assignee may recover the proceeds of such sale.

License.

AUCTIONEERS

Alberta.

NO person may sell goods by public auction unless he obtains a license so to do from the Provincial Government. The license fee is \$25.00, the license expiring December 31st in each year. A person disobeying these provisions is liable to a penalty.

Saskatchewan.

An auctioneer must obtain a license from the Provincial Secretary. Three grades of licenses are issued; (a) a license good anywhere in Saskatchewan; (b) good anywhere except in cities; (c) good anywhere except in cities and towns. The license fee is \$50.00, \$25.00 and \$10.00 respectively. Licenses expire on December 31st of each year. Municipalities may require a license in addition to such Provincial license.

Only a licensed auctioneer may sell any kind of property by auction unless the property belongs to the Crown or is sold by a city or town or by order of a court.

Manitoba and British Columbia.

An auctioneer is not required to obtain a Provincial license but such licenses are granted by municipalities in cities, towns, villages and rural municipalities.

Authority of Auctioneers.

(The following rules are derived from the common law and are in force in all the Provinces.)

An auctioneer may be appointed by writing or word of mouth. He cannot employ any other auctioneer to act for himself. He cannot sell below the reserve price (if any). He is not authorized (unless expressly instructed by the seller of the goods) to accept payment otherwise than in cash. He has no authority to make any warranty as to the goods except as expressly authorized by the seller. The auctioneer's authority is at an end when the sale is over, but can be terminated by the seller of the goods at any time before the goods are finally knocked down, but not afterwards. He has authority from both

seller and purchaser to sign a contract which is binding on them both after the property is knocked down.

Statements by Auctioneer.

Statements made by an auctioneer concerning the article sold are binding on the seller, unless the contract of sale is one which must be in writing (see chapter on Contracts as to what contracts must be in writing) and then only the terms in the written contract are binding. These terms are usually contained in a written document called the conditions of sale. If the auctioneer signs such contract for both parties, no other terms or conditions can be enforced by either party. The conditions of the sale are generally read or made public to the persons attending the auction. They are binding upon the seller, the auctioneer and the persons bidding.

Bidding.

Any person may recall his bid, or the seller of the property may withdraw it from sale at any time before the hammer falls. Where there is a reserve bid the property is not sold unless the highest bid is equal to or more than the reserve bid.

Deposit.

One of the usual conditions of sale is the payment of a deposit on the article purchased. The payment should be made to the auctioneer who has authority to receive it, and who must account therefor to the seller.

Duties of Auctioneer.

If the auctioneer fails to perform his duties as auctioneer and the owner of the goods suffers loss in consequence, he will be liable to such owner for all such loss. He must take proper care of the goods entrusted to him. He must not part with the goods until the purchaser has paid the price therefor. He must re-deliver all goods unsold after the sale to the seller. Whenever there is a sale he must make a binding contract for both parties. If he fails to do this he is liable to the party who loses thereby. He cannot himself purchase the seller's goods unless the seller

consents to his doing so. He must account to the seller for all goods and money coming into his hands belonging to the seller.

Remuneration.

The auctioneer's remuneration is fixed by agreement with the seller. If the sale is called off by the seller before the property is sold he is entitled to his expenses and a reasonable fee. He has a lien or right to hold the seller's goods until he is paid what is due him. He has a right to be indemnified for all expenses incurred by him as auctioneer.

Auctioneers and Purchasers.

An auctioneer incurs no liability to a purchaser unless he sells as owner of the goods or does not disclose the name of the real owner. He is liable to both seller and purchaser if they do not sign a contract binding both of them.

Goods held by an auctioneer cannot be sold under a landlord's distress for rent.

Any dealing with goods by an auctioneer, such as selling them, loaning or mortgaging them, consuming them, etc., renders the auctioneer liable to the owner for the loss suffered by him.

AUTOMOBILES, ETC.

Sale and Purchase of.

THE law relating to the sale and purchase of automobiles is part of the general law relating to the sale of goods. (See chapter on Sale of Goods.)

The following regulations respecting the operation of all motor vehicles, such as autos, motor cycles, but not threshing engines and motor vehicles which run on rails, or bicycles, tricycles or other cycles propelled by muscular power, are contained in "Motor Vehicles Acts." Copies may be obtained upon application to the Government Printer of each Province. The provisions are summar-

ized below. Some provisions in force in one or more provinces are not to be found in the others.

Registration.

Alberta.

Before an automobile or motor cycle, called hereafter "car", may be operated on a highway, it must be registered at the office of the Provincial Secretary. This is accomplished by filing with the Provincial Secretary a statement containing the owner's name and address, a brief description of the car, including the name of the maker, factory number, style of vehicle and the character and amount of motor power. With this statement must be paid such fees as are fixed from time to time. Thereupon a certificate of registration of the car is issued to the owner, together with two number plates containing the registered number of the car. \$1.00 is charged for each number plate. The certificate expires and must be renewed on January 1st of each year, and the certificate may be cancelled if the provisions of the Act are broken or for other just cause.

Manitoba.

Motor cars are under the control of the municipal commissioner who acts in the same capacity as the Provincial Secretary in Alberta and Saskatchewan.

All cars operated on public roads, streets, etc., must be registered. The municipal commissioner supplies forms upon which application is made. Fees are \$5.00 for motor car, \$2.00 for motor cycles and \$2.00 for motor car if application made between October 1st and May 1st. A certificate of registration is then issued and must thereafter be carried in some conspicuous position on the car. Two number plates are also issued, which must be carried and displayed as required in Alberta, see below.

Certificates expire and must be renewed every year on April 1st. Non-residents may not operate a car for more than thirty days without having the car registered.

British Columbia.

Motor cars are under the control of the superintendent of Provincial Police, similar to the Provincial Secretary and Municipal Commissioner in the other Provinces. The motors regulated are chiefly motor cars and motor cycles.

Every motor car and motor cycle in the province must be registered.

(a) Trade Licenses.

Those dealing in motors, buying and selling them, must obtain a trade license, for which a fee of \$50 is payable, and which entitles the holder to the use of 5 demonstration motors. For each extra demonstration motor a fee of \$10. is payable. This license expires December 31st of each year.

(b) Ordinary Licenses.

All motors brought into the province, except touring motors which are brought in for a period of not more than 30 days, must within 14 days after being brought into the province, and before being operated on any public road, etc., be registered.

(c) Touring License.

Motors brought into the province for a period of not more than 30 days, must have a special touring license which is obtained by delivering to the Superintendent of Provincial Police a special notice in the form prescribed, which form of notice may be obtained from such superintendent.

Applications for trade or ordinary licenses are made to the said superintendent upon a special form of application obtainable from such superintendent. The license thereupon issued expires December 31st of each year, but may be renewed from year to year by applying for such renewal on or before December 15th in each year, to the superintendent on the special form of application prescribed for that purpose. Fees payable are \$10.00 on application and \$10.00 per year for license. Persons operat-

ing cars without such license or giving false information in the application are liable to the penalties stated below.

Saskatchewan.

Every driver of a motor car or motorcycle before driving same on public roads must obtain from the Provincial Secretary a permit. The fee is \$10.00. The permit and permit number of the car must be carried in a conspicuous place on the car. The permit must be renewed at such times as the Provincial Secretary requires.

Sale of Car.

Alberta, Manitoba.

When the car is sold the seller must notify the Provincial Secretary (In Manitoba the Municipal Commissioner) the name of the new owner and return to him the certificate and number plates. A new certificate and number plates are then issued to the new owner, good until the end of the year.

Carrying of Number Plates.

Alberta.

The number plates must be placed in position distinctly visible upon the front and back of the car for which they are issued. The plate on the rear must have the lower edge not lower than the axle. Motor cycles may attach the number plate to the rear mud guard. Figures 3 inches in length and $\frac{3}{8}$ inch wide.

Manitoba.

One number plate must be affixed to the car at the front and back of the body of the car. The number on the front shall be as far forward and as high from the ground as possible to make it distinctly visible. The number at the back shall be placed on the centre of the vehicle, so that the lower edge thereof shall not be lower than the axle. At night one red lamp must be carried with a white lens illuminating such number. The license number must appear on the two white lamps required to be carried on the front of the car, and the numbers must be visible when the lamps are lighted.

Saskatchewan.

The number plate must be attached to or exposed upon the back of the body of the vehicle in a conspicuous place, the numbers to be not less than five inches high.

British Columbia.

Two plates must be exposed in conspicuous places, one on the front and one on the back; the one in front in a horizontal position as far forward as possible and sufficiently high to make it distinctly visible, the one on the back of the body of the motor. The rear number must be illuminated at night by a lamp which renders the numbers visible from a distance of fifty feet.

Speed of Cars.**Alberta.**

The speed at which the car is operated must at all times be reasonable, having regard to the place where operated. In cities, towns and villages the speed is limited to 15 miles per hour and 10 miles per hour in turning a corner of an intersecting street, and in so crossing such corner the car must not pass from one side of the street to the other. The speed must not be more than 10 miles per hour approaching a bridge. In approaching a crossing the speed must be reasonable.

Saskatchewan.

The speed of the car must not in cities, towns, or villages exceed 10 miles per hour. Outside such places 20 miles per hour is permitted. No racing is permitted on a public street, road, park or driveway.

Manitoba.

The speed of the car must not exceed in cities, towns and villages 15 miles an hour, nor 10 miles per hour when turning or approaching a corner of an intersecting highway or street. Within the rural municipalities of Assiniboia, Fort Garry, East Kildonan, Rosser and St. Vital the limit of speed is 20 miles per hour.

British Columbia.

The speed of motors in cities, towns and villages must not exceed 10 miles per hour, outside thereof 25 miles per

hour in open country and 12 miles per hour in wooded country. Municipalities may make different regulations regarding speed.

On approaching and crossing street intersections and bridges, the speed must be reduced to an extent which the circumstances warrant.

Lamps, Bells and Gongs.

Alberta, Saskatchewan and Manitoba.

Each car must carry, from one hour after sunset to one hour before sunrise, two lamps, one on each side in front, so placed as to show distinctly the number plate, and one lamp on the rear so placed as to cast a white light on the number plate. Motor cycles must display one white light in the direction in which they are going. Cars must also be supplied with proper brakes and bells or gong, etc., which must be sounded at any time necessary to warn pedestrians or others on the roads. No search-light may be carried.

British Columbia.

A proper bell, gong or horn must be carried and sounded at all times to warn passengers on the highway. Two lamps must be carried at all times in a conspicuous place in front of the motor with the license number displayed on the glass of such lamps in a prominent position. Such lamps are to be lighted when the motor is on the highway at dark and before dawn. The motor must be locked when standing unattended on any highway.

Chauffeurs.

Alberta and Manitoba.

All persons operating cars as chauffeurs must be eighteen or over and obtain a certificate. In Alberta the application for such certificate must always be made to the Provincial Secretary who after conducting an examination as to the applicant's qualifications, may grant a certificate, good until the first of each year. When operating the car the chauffeur must display his badge. In Manitoba the application for the license must be made to the Municipal Commissioner and the license expires on April

1st of each year and must then be renewed. A license will not be issued to more than one person, nor to a firm or company.

No person under 17 years of age or intoxicated person may drive a motor along any highway. A chauffeur may not drive a motor upon any highway unless he has been duly licensed. Application for such license is made to the superintendent. The fee is \$5.00. Such license expires and may be renewed at the same time as a motor license. Such license may at any time be cancelled upon proof of the chauffeur's unfitness, such as reckless driving, use of intoxicants, or for any disobedience of the law respecting the operation of motor cars, or for any other reason deemed sufficient.

Saskatchewan.

No person under 16 may drive a car unless accompanied by an adult. This rule does not apply to motor cycles.

Persons Who May Not Operate.

Alberta and Manitoba.

No male person under 16 and no female under 18 or intoxicated person may operate a car on any road, street, etc.

British Columbia.

No person under 17 may drive a motor along any highway.

Rules of the Road.

In Alberta, Saskatchewan and Manitoba the rule of the road is to keep to the right. In British Columbia keep to the left.

Passing in Narrow Grades and in Rural Districts, Outside Cities, Towns and Villages.

Alberta and Manitoba.

In approaching a grade dangerous for passing rigs the car must be stopped until all horse vehicles coming in the opposite direction have passed, and at any time on such country road must, when within 200 yards of a person

walking, or a horse or horses travelling upon the highway in either same or opposite direction, the car must be slowed down to a speed of 6 miles per hour and all reasonable means must be taken to insure a safe passage of such person, horse, etc.

Stopping Car for Horses.

Alberta, Manitoba and British Columbia.

Outside of cities, towns and villages any person driving, leading or riding horses or other animals and apprehending danger from a car approaching in the same direction may signal by putting up the hand and thereupon the car must come to a stop on the left side of the highway and the driver must discontinue all noise from the car and use all care in passing such horses, and if coming in the opposite direction must stop until the horses have passed. The driver of the car and all male persons over 15 in the car must in all cases give all possible care to badly frightened horses they are passing. While the car is slowed up or stopped no noise should be allowed to come from the car.

Saskatchewan.

All possible precautions must be observed when the car comes within one hundred yards of any horse or horse vehicle while either going in the same, or in an opposite direction. It must slow down to a rate of speed of not more than six miles per hour until the horse or horse vehicle is passed. If the horse becomes frightened the car must come to a stop and proceed no further until the horse has passed, unless necessary to render assistance.

Passing Street Cars.

Alberta.

Motor cars in passing street cars about to stop, must stop until the street car has started and all passengers have alighted.

Returning to Scene of Accident.

Alberta, Saskatchewan.

In case of an accident by reason of a car, the driver of the car must stop at once, return to the scene of the

accident and give to the person sustaining loss the name and address of himself and the person owning the vehicle and the registered number of the car. Failure to do this renders the person guilty to a fine of \$50.00 for the first offence, second offence \$100 or to one month's imprisonment, or both, and the later offences imprisonment for six months.

British Columbia.

In the case of an accident the motor driver must after returning to the scene of the accident and giving his name, address and license number, furnish a written report of the accident. If in a city within six hours thereafter to the Chief of Police or Constable, if in a district municipality, within 24 hours to the clerk of the municipality or some police officer, and if in unorganized territory within 24 hours to some provincial police officer or constable.

Tampering with Car.

Alberta.

No person may without the consent of the person in charge tamper with a car or climb upon it whether at rest or in motion, or hurl stones or other missiles at it or the occupants of it, or sound the horn or attempt to manipulate the levers, etc., or set it in motion. Persons doing any of these acts are liable to fine and imprisonment as for other offences. (For full provisions of Act apply to Provincial Secretary or King's Printer at Edmonton.)

Locking and Mufflers.

Manitoba.

Machines when kept standing in any public place must be locked. Mufflers must also be used when the machine is operated in a thickly settled or business portion of any town or city.

Penalties.

Alberta and Manitoba.

The penalties for disobedience of the rules render the offender liable to fines from \$20.00 to \$200 and imprisonment for upwards of one month, depending on whether

the offence be a first, second or later offence, and to a cancellation of license.

British Columbia.

Persons disobeying the rules prescribed in the Act are liable upon conviction to penalties of from \$5.00 to \$300.

Saskatchewan.

Persons violating the rules are liable to a fine of \$50 and to have their permit cancelled.

Liability of Owners.

Alberta, Saskatchewan and Manitoba.

Owners of cars are liable to all penalties for the violation of the above rules. If the owner is not in the car when an accident happens he is not liable to imprisonment, but he is liable for damages to persons or property caused by the negligence of the driver of the car.

BANKING, CURRENCY AND LEGAL TENDER

Incorporation.

CANADIAN Banks are incorporated by special Act of the Dominion Parliament. The capital cannot be less than \$500,000. One half of this sum in cash must be in the hands of the Minister of Finance before the Bank can commence business.

Bank Note Issue.

Banks cannot issue notes in amount greater than their capital and gold deposited in a central gold reserve. During crop moving season they are allowed to issue 15 per cent. more notes.

Security.

Bank notes form a first charge on all assets of the Bank. All shareholders of a bank are liable if the bank is insolvent to double the amount of stock held.

Legal Tender.

(Money which a creditor is bound to accept in payment of a debt).

Ordinarily bank notes are not legal tender (special legislation made them so during the war) but the bank which issues them must accept them to an unlimited amount.

Dominion notes and coins are legal tender as follows:

(a) Dominion notes and gold coin (Canadian, British or American) for payment to an unlimited amount.

(b) Silver coins (Canadian) to an amount not exceeding \$10.

(c) Bronze or copper coins to an amount not exceeding 25 cents.

Business and Powers of Banks.

Banks may engage in the following business:

(a) Accept deposits.

(b) Collect cheques, notes, etc., for its customers.

The bank is liable for loss if it does this work carelessly.

(c) Issue notes (see above).

(d) Discount bills (drafts), notes, etc., and make loans taking as security and as collateral security bills notes, cheques, stocks, bonds and debentures of corporations, Canadian, British and foreign. The bank is liable for any loss through its carelessness to the customer while holding the collateral but may realize upon it if the customer's debt to the bank is not paid when due.

(e) Keep in safe custody its customer's title deeds, small valuables, etc.

Banks may not,

(a) Buy or sell goods or engage in any business.

(b) Buy or sell or loan money on any bank stock.

(c) Lend money out on land or chattel mortgage but may take such mortgages as additional security for debts and may take chattel mortgages from a farmer or person engaged in stock raising upon his live stock, which includes horses and mares, bulls, cows, oxen, bullocks, steers, heifers and calves, sheep and swine and the offspring of all such animals.

Bank Loans and Security.

Banks may take as security for loans the following:

(a) Warehouse receipts and bills of lading.

(b) Products of agriculture as: threshed grain, live or dead stock or the products thereof, products of the forest as, sawn lumber, logs, etc. Products of quarry, mine, sea, lakes and rivers.

(c) Manufactured goods and goods in process of manufacture.

The bank holds while the customer is indebted to it an absolute title to such goods and is liable for loss to the goods. Other goods may be substituted with the bank's consent. The bank's claim is good against all claims except those of which it has notice as liens, chattel mortgages and bills of sale registered.

The above securities **must be given at the time** of the loan or agreed in writing to be given when the loan is obtained.

Sale of Goods Taken as Security.

If the customer does not pay his loans from the bank when due the bank may sell the goods taken as security returning the surplus to the customer after satisfaction of debt and charges but before doing so, must give notice to the customer by registered mail as follows: 30 days where products of the forest are to be sold; 10 days where other goods are to be sold.

Wages and Salaries.

These are a first claim (before bank's) except where goods are covered by bills of lading and warehouse receipts.

Interest on Loans.

Banks cannot charge more than 7 per cent. on loans. Any agreement for more is invalid. Compound interest may not be charged. When, however, a bank has charged and collected more than 7 per cent. it cannot, it seems be forced to pay back the excess.

Charges for Collection.

Banks may make a small extra charge viz. one-eighth of one per cent. in addition to the discount charges to defray agents' fees in collecting notes, cheques, etc.

Deposit.

Minors (persons under 21) and persons of unsound mind may not deposit more than \$500. All others may deposit any amount.

Interest.

Banks may allow any rate of interest on deposits. Interest is usually allowed only on time and savings deposits.

Cheques.

Banks must honour a customer's cheques if he has sufficient funds on deposit to meet them but if a cheque is larger than the deposit the bank is not required to honour it even to the extent of the deposit.

Pass Book.

A customer is not bound if he accepts an incorrect pass book but may afterwards have it rectified.

Confidence.

Banks must not divulge their customer's affairs except where called upon to do so by a court of law.

Payment Out.

Deposits may be paid out only to the following persons:

- (1) Depositor on his receipt.
- (2) Where account stands in name of two, to one of them on his or her receipt.
- (3) Where more than two depositors, to a majority of them on their receipt.
- (4) Payee of cheque signed by depositor.
- (5) If depositor be dead, to his personal representatives (executors and administrators).

Trust Companies.

No Trust Company incorporated by the laws of any province of the Dominion is permitted to accept moneys on deposit.

Trust companies organized under a Dominion Charter may accept moneys and hold the same until invested, paying interest in the meantime. These are not deposits but are funds which are left with the Trust Company to be placed out on investments.

BILLS, NOTES AND CHEQUES

CALLED generally negotiable instruments.

The law respecting these instruments is contained in a Dominion Statute called The Bills of Exchange Act and is consequently the same all over Canada. A note so much resembles a bill of exchange (draft) that except where otherwise mentioned the law as to both is the same.

Capacity to Make.

Persons who can legally contract can become parties to notes. No person under 21, no lunatic or idiot can make a valid note. Companies can if their charter permits them. (See contract).

Parties, etc.**(a) Parties to Notes.****(1) Maker.**

Person who signs and agrees to pay.

(2) Payee.

Person who is named in note to receive money.

(b) Parties to Bill (Draft).**(1) Drawer.**

Person who draws and agrees to pay if drawee does not.

(2) Drawee.

Person to whom the bill is drawn.

(3) **Acceptor.**

When drawee accepts by writing his name on bill he becomes the acceptor and thereby agrees to pay the holder.

(4) **Payee.**

Person who is named in bill to receive payment.

(c) **Parties to Notes and Bills.**

(1) **Holder.**

Person who holds bill or note in his own right and is entitled to receive payment.

(2) **Endorser.**

Any person who transfers the bill or note by endorsing it (writing his name on back).

(3) **Endorsee.**

Person who receives note or bill from endorser.

Requirements of a Valid Note.

(a) **Form.**

No particular form necessary. It may be in any language. It must be in writing. It is safer to use the forms to be obtained in any bank.

(b) **Conditions.**

Promises to pay must be absolute. There must be no conditions such as promising to pay when something occurs.

(c) **To Pay Money.**

It must promise to pay money only; the amount must be fixed and definite.

(d) **Time.**

Money must be payable at a fixed and certain time after date, e.g. "on demand," "30 days after date," etc. If no time is fixed a note is payable on demand.

(e) **Date.**

A note should be dated. But it is not invalid if not dated. Date may be proved in evidence.

(f) **Payee.**

The payee should be named unless the note is payable to bearer. If the payee mentioned is a fictitious (imaginary) person, the note is payable to bearer.

(g) **Signature.**

The maker must sign. If his agent signs with his authority he is bound. One of several partners may sign in firm name.

Requirements of Bill (Draft).

Same as note except that parties are different (See Parties, above). The drawer must sign. The name and address of the drawee must be given.

Requirements of Cheques.

Cheques being bills on banks the same law applies as to bills.

Joint and Several Notes.

(1) Notes signed by two or more makers beginning "We jointly promise etc." are joint notes. On joint notes all must be sued. Judgment against one is judgment against all. Any maker can use another's defence when sued.

(2) Notes signed by two or more persons with words "We jointly and severally promise etc." or without such words are joint and several notes. Each maker is liable for whole sum and may be sued alone.

(3) A note reading "I promise to pay" and signed by two or more persons is deemed to be their joint and several note.

Accommodation Notes.

Are notes given by a maker to a payee to whom he is not indebted and only to enable him to raise money on it. Makers of such notes cannot be sued by payee and are only liable to holders in due course. If person signing the note for accommodation has to pay the note he may recover the amount from the person accommodated.

Consideration (Value for Notes).

Words "Value Received" are not necessary to make a note valid but all notes except accomodation notes must have such value given for them at some time while they are current as will support a contract.

Transfer of Notes.

Endorsement means writing name on back of note.

(a) Notes Payable to Bearer.

These are transferred by simple delivery by holder.

(b) Notes Payable to Order.

These are transferred by endorsement as follows:

(1) In Blank.

Payee or holder wishing to transfer simply writes his name on back without other words. Note is then payable to bearer. Any later holder or endorsee may endorse it specially by writing after his signature the words "Pay to J. H." or "Pay to J. H. only."

(2) Special Endorsement.

Payee endorsing writes after his signature "Pay to order of J. H." note is then still payable only to order of J. H. and only J. H. can validly transfer it by endorsing it. If he or any endorser transfers a bill without endorsing it, person to whom bill is transferred gets a good title. No note can be transferred as to part only.

(3) Restrictive Endorsement.

Person endorsing writes after his signature words prohibiting further transfer as "Pay to J. H. only." Such a note cannot be transferred without authority. A note discharged by payment cannot be endorsed. Where two or more payees, not partners, all must endorse. Where name of payee is misspelt he should endorse his proper signature. When payee is insolvent his assignee and when dead his executor or administrator should endorse.

Holder in Due Course.

Is one who takes note complete and regular on the face of it—before it is due—for value—in good faith, with-

out notice of any defects or that note had been dishonoured. A holder in due course has an absolute and perfect title to the note, free from all defects, and so has everyone getting their title through him. If he complies with the above conditions no defence against the original parties can be set up against him if he sues on the note.

A Forged Note.

Confers no title on anyone and is absolutely worthless.

Overdue Notes

Persons taking such notes take them with all defects existing when they were due.

Dishonoured Notes.

Persons taking such notes take them with all defects at time of dishonour, if they had notice of such dishonour.

Presentment of Bill (Draft) for Acceptance.

(Does not apply to notes)

(1) Demand and sight bills must be presented to drawee for acceptance.

(2) Bills payable after date need not be presented, unless they are made payable elsewhere than at the residence or place of business of the drawee, but it is advisable to present them so as to have drawee's signature on them.

(3) Where bill states that it is to be presented for acceptance or where it is drawn payable elsewhere than at residence of drawee it must be presented for acceptance. In the last case when presentment for acceptance cannot be effected before presentment for payment it will be excused.

How Presented.

Must be to drawee in person or some one duly authorized by him. If dead to his executor, etc., at a reasonable hour on a business day before bill is overdue. Where there are two or more drawees, not partners all must accept unless one has authority from the others.

How Accepted.

Merely by drawee writing his name on the face with or without words such as "accepted, etc."

Acceptance may vary terms of bill or be on a contingency or condition if holder consents. If he does not consent he may treat such an acceptance as a dishonour.

When bill is dishonoured by non-acceptance holder has immediate rights against drawer and endorser if he notifies them in manner indicated under heading "Notice of Dishonour" or protests the bill for non-acceptance.

A bill dishonoured by non-acceptance may be accepted by another "For Honour". Such acceptor for honour will only have to make payment if drawer does not. He becomes practically the backer of a note the drawer being the maker.

Presentment for Payment.

(Applies to Bills and Notes)

(a) Presentment Unnecessary.

Notes not endorsed and accommodation bills, or bills where no place of payment is given do not require to be presented for payment. Also where presentment cannot be effected as required by the Act.

(b) Presentment Necessary.

Other notes and bills must be presented for payment in order to hold endorsers liable.

(c) How Presented.

Should be exhibited to payer.

(d) When.

When bill or note falls due. (See days of grace). Demand bills and cheques should be presented without delay.

(e) By Whom.

By holder or someone authorized by him.

(f) To Whom.

To payer or someone authorized by him. Where payers partners one will do. If payer dead, presentment should be made to executor or administrator.

(g) Where.

At place of payment mentioned in bill, where no place is mentioned then at the address of payer of bill. Where no address then at payer's place of business or residence, if none known then at last known place of business or residence or anywhere payer can be found. If these measures fail to locate him presentment will be excused. Diligence should be used in effecting presentment, but reasonable delay will be excused.

Days of Grace.

No days of grace are added to bills and notes payable on demand. Three days of grace are added to all other bills and notes. These are accordingly not due and payable until the third day after the time of payment fixed by the bill.

Legal Holidays.

When last day of grace falls on a legal holiday or Sunday, the bill is not due until next day unless it is also a legal holiday or Sunday, when bill will be due the day following. Legal holidays are Sundays, New Years Day, Good Friday, Easter Monday, Victoria Day (May 24th), Dominion Day (July 1st), Labour Day, Christmas, King's Birthday, Day set apart for Thanksgiving.

Interest.

Unless stated in note to be payable, interest is not payable until after maturity. It is then payable at the legal rate of 5 per cent. If interest is stated in bill to be payable it runs from date of bill. Persons who are not money-lenders or banks can charge any rate of interest; money-lenders are limited to 12 per cent. Banks cannot enforce payment of more than 7 per cent. but it seems that they cannot be compelled to return the excess interest when it has been paid to them.

Dishonour.

After note is presented for payment and payment is refused or where presentment cannot be effected or is unnecessary, and payment cannot be obtained, the note is dishonoured by non-payment. The holder has then im-

mediate rights of action against all persons liable provided notice of dishonour is given as follows:

Notice of Dishonour.

Must be given as follows:

(a) **To Whom.**

To drawer of bill and endorser of bills or notes or their duly authorized agents for that purpose. Makers of notes and acceptors of bills need not be notified in order to hold them liable where two endorsers both should be notified.

Where Two Endorsers Both Should be Notified.

(b) **By Whom.**

Holder or endorser liable.

(c) **When.**

Not later than business day following dishonour.

(d) **Manner and Form.**

(See Form of Notice in Appendix).

Should be in writing or by personal communication. No special form is necessary so long as note or bill is identified and it is intimated the note has been dishonoured by non-payment. It need not be signed. The return of a dishonoured bill would be sufficient notice. Where any drawer or endorser receives notice he should notify all prior endorsers he wishes to hold liable.

(e) **How Sent.**

Should be mailed in any Post Office not later than the business day next following dishonour, addressed to drawer or endorser at their customary place of business or residence or at the place where the bill is dated or to address drawer or endorser has by his signature indicated. Miscarriage by Post Office will not invalidate notice. Notice should be registered. Delay will only be excused when not caused through carelessness of sender.

Notice of Dishonor is Unnecessary.

(a) To hold liable acceptors of bills and makers of notes or (b) where notice cannot possibly be given as re-

quired by the Act or (c) where endorser or drawer dispenses with it.

Protest.

Inland bills and notes are those which are made or drawn in Canada payable in Canada or to some one resident in Canada.

Foreign bills and notes are all other bills and notes.

Inland bills and notes **need not** be protested for non-acceptance and non-payment. Foreign bills and notes must be so protested for non-payment and non-acceptance, but it is not necessary to protest a foreign note to hold the maker liable or a foreign bill to hold the acceptor liable. Protest of foreign bills and notes is only necessary to hold drawers of bills and endorsers of bills and notes liable.

It is however advantageous to note and protest an inland bill or note because the protesting is evidence that the bill has been duly presented for payment or acceptance and if dishonoured, that notice of dishonour has been given to the proper parties.

Protesting bills and notes must be performed by a notary under his seal.

Liability of Parties.

(1) Bills.

(a) Drawee is not liable until he accepts the bill. When he accepts it he is liable to any holder in due course.

(b) Drawer is liable for payment of the bill to any holder in due course if drawee dishonours it by non-payment.

(2) Notes.

Maker is liable to any holder in due course but an accommodation maker is not liable to the person (payee) accommodated.

(3) Bills and Notes.

Endorsers are liable to pay full amount of note or bill to any holder in due course, if prior parties, e.g. makers,

acceptors and drawees fail to make payment. Any endorser who has to pay the note or bill can in turn recover what he has been compelled to pay and his costs and expenses from the maker of the note or the drawer and acceptor of the bill and all endorsers prior in date to him. In like manner "backers" of notes and persons signing accommodation notes may recover from the persons backed or accommodated in case they are compelled to make payment of the note.

Endorsers (Without Recourse).

A person may endorse a bill or note adding the words "Without recourse" in which case he will not be liable upon it to anyone.

Payable to Bearer.

Persons who transfer bills or notes payable to bearer by simple delivery incur no personal liability.

Discharge.

A bill or note is discharged by

(a) Payment at maturity to proper person, holder in due course, without notice of any defect in his title.

(b) (Accommodation notes.) When person accommodated pays them.

(c) When acceptor of bill or maker of note becomes the holder in his own right after maturity.

(d) A renunciation in writing by holder of all claims against payer or where holder gives up bill.

(e) Where holder intentionally cancels the bill or note.

(f) Where bill or note is altered without the consent of all parties as follows: Alteration of date, sum payable, time of payment, place of payment, addition of place of payment where none mentioned. No one is liable after such alteration except person altering.

Where alteration is not apparent and bill or note is in hands of a holder in due course the bill or note is not discharged.

Loss of Bill or Note.

When bill or note is lost before overdue, holder may apply for another of same tenor upon giving security to person liable on bill or note to indemnify him in case lost instrument is found.

Cheques.

Same law applies as to bill payable on demand. Cheques should be presented as soon as possible after issue. If not so presented and loss is suffered the drawer of the cheque is discharged to that extent. Stopping payment of a cheque before it is presented cancels the cheque. (See Banks, Banking, etc.).

Garnishee Order.

Customers' cheques cannot be honoured by the bank if a garnishee order is served on the bank before the cheque is presented, even though the garnishee order is less than the customer's deposit.

Limitation (See Limitation of Action).

BONDS

A BOND is a deed invariably under seal whereby the maker or obligator as he is called, obliges himself, his heirs, executors and administrators to pay as a penalty a certain specified sum of money to another person called the obligee. Usually a condition is added to the effect that if the obligor performs some particular act or duty the bond will become void, otherwise it is to remain in full force and effect.

The penalty mentioned in the bond is usually double the real debt due and where the bond is given to secure the performance of some act the penalty for not performing it is usually a reasonable sum to cover the loss suffered by the person for whom the act was to be done. In any case wherever the condition upon which the bond was given is left unfulfilled only the actual amount due or the damage suffered can be recovered no matter how large the amount mentioned in the bond. Sometimes the parties

to a bond agree that if the condition of the bond is not fulfilled the amount fixed is not a penalty but damages fixed by the parties but the practice of courts is only to give the amount of loss actually suffered.

A person bound under a bond is excused only if performance becomes impossible by events over which he had no control.

Bonds are usually given now by bonding companies instead of private persons.

Where the bond is given by one person to secure the performance by another of some act the person bound is released by the person for whose benefit the bond is given extending time to the person indebted or who is to perform the act.

CHATTEL MORTGAGES AND BILLS OF SALE

A Bill of Sale.

IS a document in writing usually under seal executed by a seller of goods (the vendor), whereby he conveys his right, title and interest in the Goods to the buyer (the vendee).

When goods are of trifling value or the physical possession of the goods passes immediately from the seller to the buyer, a bill of sale is unnecessary. When the goods remain in the possession of the seller the buyer should have a bill of sale executed by the seller to protect himself against the creditors of the seller and to remove all doubts about the sale.

A Chattel Mortgage.

Is a document in writing (similar to a land mortgage) usually under seal, executed by an owner of goods, to the mortgagor, whereby he mortgages or pledges such goods for debts or advances of money by the mortgagee. The goods usually remain in the possession of the mortgagor.

The Bills of Sale and Chattel Mortgage Acts require such instruments to be registered. The instruments themselves are to protect the buyer or mortgagor respectively. The registration is to protect the public by giving notice that persons other than those in possession of the goods in question have rights in them.

Any person who can legally contract (see Contract) can make a valid Bill of Sale or Chattel Mortgage.

The following paragraphs apply equally to Chattel Mortgages and Bills of Sale unless otherwise specified.

Consideration.

Any consideration which will support a contract (see Contract) will make valid a bill of sale or chattel mortgage.

Fraud.

If any fraud in connection with the transaction is proved the instrument is null and void. For example, if an insolvent disposes of goods under a bill of sale or obtains money on them by a chattel mortgage in order to put such goods out of reach of his creditors and the purchaser or mortgagee of the goods can be shown to have had knowledge of the other's fraudulent purpose, the instrument may be set aside.

Compliance with Statute.

As these statutes are to protect persons purchasing or loaning money on goods the provisions and rules contained in the statutes must be **strictly** followed, otherwise the chattel mortgage or bill of sale may be set aside. **A solicitor should always be employed in such transactions.**

Goods Which may be Mortgaged under a Chattel Mortgage or Sold under A Bill of Sale.

Alberta, Manitoba and Saskatchewan.

All goods and chattels capable of complete transfer and delivery such as livestock, machinery, trade machinery, grain, household goods and furniture, &c., but not

(a) Fixtures, i.e., Articles affixed to and intended to become part of land or buildings permanently.

(b) Timber, growing grass, gravel, minerals, coal, oil, precious metals, until these are separated from the land or intended only to be sold when separated from the land.

(c) Growing crops or crops to be grown in future unless the mortgage or bill of sale is given to secure advances for seed grain.

In Saskatchewan, however, mortgages upon growing crops or crops to be grown may be given to the extent of \$250 in all if such crops are on a quarter section or \$350 in all if upon a half section or greater quantity of land. Such mortgages are good only when given as security for the price and interest thereon of meat, groceries, flour, clothing or binder twine.

British Columbia.

The same, except that there is no restriction as to growing crops and fixtures, Conveyances and Mortgages of land will include such fixtures and growing crops with the land, although not specifically mentioned. In conveying buildings, trade machinery is not conveyed therewith unless specially and separately transferred by Bill of Sale.

Forms (Alberta, British Columbia, Manitoba and Saskatchewan).

A Bill of Sale or Chattel Mortgage must be in writing. In Alberta and Saskatchewan a particular form of chattel mortgage is given, otherwise no particular forms are given in the acts. Stationers usually carry in stock printed forms which generally meet the requirements of the acts. The instrument must contain:

(a) Date.

(b) Names of Parties (Mortgagor and Mortgagee, seller and buyer as the case may be) with full description, name, surname, postoffice address and occupation.

(c) The actual amount advanced if a chattel mortgage and the amount paid for the goods if a Bill of Sale should be correctly stated.

(d) A complete description of each article intended to be mortgaged or sold should be given so that such article may be readily identified. The land upon which the goods are situated, and when possible the exact locality of each article should be accurately described. When household goods are sold or mortgaged it is sufficient to describe accurately the larger and more important articles and refer generally to smaller articles if they are described as being all the household goods and chattels in a particular house or rooms.

(e) The usual covenants as to insurance, sale of goods upon breach of conditions by the mortgagor such as default of payment at the time mentioned, substituted goods, etc.

(f) The instrument must be sealed and signed in the presence of a witness who must make an affidavit of execution.

(g) Affidavit of Bona Fides, an affidavit by the purchaser of the goods or the mortgagee as the case may be or his duly authorized agent (in Saskatchewan and Alberta the agent's authority must be in writing) that the instrument duly sets forth the true consideration and is made in good faith and not to protect the goods against the creditors of the seller or mortgagee.

Registration.

(a) Alberta and Saskatchewan.

Registration must be made within 30 days of execution in the office of the clerk of the Registration district in which the goods are situated. These districts correspond with the Judicial districts and the clerks are the clerks of the Supreme Court of each Judicial District.

(b) British Columbia.

Registration is made in the county court registry of the county where goods are situated. If the goods are in towns where there is a county court registry office registration must be effected within 5 days of execution. But if they are outside of such towns, within 21 days of execution.

(c) Manitoba.

Registration must be effected within 20 days of execution, in the Registry office of the clerk of the county court of the judicial division in which the goods are situated at the time of execution.

In each province when the last day for filing falls on a Sunday or legal holiday (as to legal holidays see chapter on Bills of Exchange) filing may be made on the day following. Failure to file within the time required renders the chattel mortgage null and void as against creditors of the seller or mortgagee. These remarks apply to renewals. Fees of 50 cents to \$1 are charged for filing.

Seed Grain Mortgages.

Alberta and Saskatchewan only.

Mortgages may not be given on, nor liens put on, growing crops or crops to be grown in the future unless to secure advances made for seed grain. When a mortgage covers growing crops or crops to be grown, the affidavit of bona fides must state that the same is given to secure the price of seed grain. The date of the purchase of seed grain, the number of bushels and price per bushel must be stated in the mortgage as well as in the affidavit of bona fides. In other respects these mortgages are subject to the same rules as mortgages of other goods. Seed grain mortgages are a first charge on the crop. They cannot be given to cover a crop sown later than a year after execution of chattel mortgage. A separate registry of such mortgages is kept.

Mortgages Given for Future Advances (Alberta, Saskatchewan and Manitoba).

Mortgages may be given upon the security of chattels for the following purposes:

(1) To enable the borrower to enter into and carry on business with moneys not immediately advanced but to be advanced in future (in Manitoba the time of repayment must not be longer than two years from the date of the mortgage).

(2) To secure an endorser of bills and notes or any other liability incurred by one person for another but not to secure such person for a longer period than two years.

The chattel mortgage must contain the agreement entered into in full and the affidavit of bona fides must state that the mortgage truly sets forth the agreement entered into and is given in good faith and for the express purpose of securing the mortgagee upon the conditions therein stated. Registration is the same as for ordinary chattel mortgages.

Agreements for the Sale of Goods or for a Chattel Mortgage.

Agreements for the sale of goods or for a chattel mortgage must (in Manitoba) conform to the Bills of Sale Act. Unless the goods agreed to be sold or mortgaged pass immediately the agreements must be registered.

Renewal of Chattel Mortgages.

(1) Alberta, Saskatchewan and Manitoba.

(a) Within 30 days before two years after the chattel mortgage is filed a renewal must be filed in the same office showing the state of accounts between mortgagor and mortgagee with all payments made and the amount then due with interest. This must be accompanied by an affidavit of the mortgagee or his assignee or the duly authorized agent of either, that the statement in the renewal is true and that the mortgage is not kept on foot for any fraudulent purpose. Forms of renewals are set out in the acts of each province.

(b) Subsequent renewals in accordance with the above requirements must be filed within 30 days before the expiration of one year in Alberta and Saskatchewan (2 years in Manitoba) from the date of the filing of the above renewal statement and so on from year to year (in Manitoba every two years) as long as the mortgage remains in force.

(2) British Columbia.

No renewals need be filed but any creditor of the mortgagor upon application to the mortgagee, with a certified statement of his accounts with the mortgagor showing the mortgagor to be his debtor, may obtain a complete statement of the accounts between mortgagor and mortgagee. This must be verified by statutory declaration and must be furnished within 15 days after demand.

Assignment of Chattel Mortgage.

In Alberta, Manitoba and Saskatchewan an assignment or transfer of a chattel mortgage accompanied by the affidavit of the attesting witness may be registered in the office where chattel mortgages are registered. In British Columbia such assignments do not require to be registered.

Discharge of Chattel Mortgage.

Alberta, Manitoba, Saskatchewan and British Columbia.

A mortgage may be discharged in whole or in part by filing a certificate of discharge in the office where the mortgage is registered. The certificate should be in the form given in the act. It must be signed by the mortgagee or assignee (or agent) and must show the amount paid off. A certificate of discharge may be obtained from the clerk

Possession of Goods Under Chattel Mortgage.

The mortgagor is generally allowed to retain the possession of goods until he makes default in payment or fails to perform the covenants in the mortgage, when the mortgagee may seize them.

Removal of Goods Under Chattel Mortgage.

(a) Alberta and Saskatchewan.

Goods covered by chattel mortgage must not be removed from one registration district to another unless notice of the intention to remove is sent by registered mail to the mortgagee within 20 days of such removal. When goods are removed copies of the mortgage and all papers relating thereto must be filed in the office of the registration clerk of the district to which the goods are removed. Otherwise the goods are liable to be seized and sold under an execution by an execution creditor of the mortgagor.

(b) Manitoba.

If goods covered by chattel mortgage are moved to another registration district a copy of the mortgage and all instruments relating thereto must be filed within 6 months in the registry office for the new District.

Chattels in Several Districts (Manitoba and British Columbia).

Registration in one district only is necessary but copies should be sent to the registry offices of other districts in which goods are situated.

New Districts (Alberta).

When a new registration district is formed and there are goods situated in it held under a chattel mortgage which was properly registered it is not necessary to register the mortgage in the new district. But when the time comes to register a renewal, it, together with a certified copy of the mortgage, should be registered in the new district.

Substituted Articles and Accessions.

If the mortgage provides for it, mortgaged goods forming part of the stock-in-trade of a business may be sold. Also the mortgagee may take goods in substitution for goods covered. After-acquired property, i.e., things coming into existence in connection with the mortgaged goods or manufactured out of them, such as the natural increase of animals, lumber manufactured from logs, etc., are covered by the mortgage.

Seizure and Sale.

The mortgagee may seize and sell goods covered by a chattel mortgage for any of the following causes, unless it is otherwise mentioned in the mortgage.

(a) If the mortgagor makes default in payment of principal or interest when due or fails to perform any of the covenants in the mortgage.

(b) If the mortgagor removes the goods into some other judicial district without the consent of the mortgagee.

(c) If the goods are seized for rent or taxes.

(d) If execution is levied against the goods.

(e) If the mortgagor attempts to sell or dispose of the goods.

The usual practice is to give the chattel mortgage to a Bailiff, together with a duly executed warrant.

CONTRACTS AND AGREEMENTS

Definition.

A CONTRACT is an agreement, enforceable at law, between two or more persons to do or abstain from doing some act.

If it is in writing and signed under seal it is a specialty contract. If it is not sealed, whether in writing or not, it is a simple contract. In a simple contract, that is one which does not carry a seal, valuable consideration must pass between the parties to make the contract binding.

Formation.

Contracts are composed of two elements, an offer by one party to another to do or refrain from doing certain things in return for the other party doing or refraining from doing other things and an acceptance of that offer by that other party. An offer unless it is under seal or unless value is given to keep it open for a certain length of time, such as an option to purchase land given for a month for which \$1.00 is paid, can be revoked at any time before it is accepted by the other party, but as soon as it is accepted by the other party it becomes a contract binding on both parties. A letter of acceptance once posted completes the contract and binds both parties even though it never reaches the one to whom it is addressed.

Options.

Options are offers by an owner of property to sell the property at a given price and to hold the offer open for a certain length of time. If the option is under seal or value is given for it, it may not be withdrawn until the time for which it is given expires, otherwise it may be withdrawn at any time. It does not become a binding contract until accepted by the other party. Such acceptance may be by letter or by word of mouth, but it is much safer and better to have the acceptance in writing.

Form of Contract.

Contract in Writing.

Certain contracts must be in writing. These are as follows:

(a) Bills of exchange and promissory notes (See Chapter on Bills, notes and cheques).

(b) Assignments of Copyright.

(c) The acceptance or transfer of shares in companies must be in writing.

(d) An acknowledgement of a debt barred by the Statute of Limitations requires a writing signed by the debtor. (See chapter on Limitations of Actions).

(e) Lien Notes in three of the Western Provinces are required to be in writing. (See Lien Notes).

(f) A lease for more than three years must be in writing.

(g) The following contracts under the Statute of Frauds require a writing.

(1) Where an executor or administrator agrees to answer damages due from the deceased's estate out of his own estate.

(2) Whenever a person guarantees the debt of another, i.e., becomes his surety.

(3) Any agreement made in consideration of marriage. Promises to marry need not be in writing, but agreements to settle lands or annuities in consideration of marriage require to be in writing.

(4) Any agreement to sell lands or any interest in lands such as the sale of a farm or of a farm lease, or an agreement to give a lease.

(5) Agreements not to be performed within one year, such as contracts for service for say a year and a half. Although the contract is for an indefinite time if it can be performed within one year no writing is necessary.

(6) (In Alberta). An agreement to pay a commission on a sale of real estate.

(h) Declarations of trusts of lands and grants and assignments of any trusts must be in writing.

Sale of Goods (See chapter on Sale of Goods).

Every sale of goods of the value of \$50.00 or over must be in writing unless the buyer accepts part of the goods and actually receives them or makes a part payment thereon or gives something in earnest to bind the bargain.

Requisites of Writing.

In the case of contracts mentioned under (g) above (1 to 6) no special form of writing is necessary but the writing should contain

(a) Names of all parties to the agreement who must be so named and described so as to be identified easily and certainly. Full name, Post Office or street address and occupation should be given.

(b) The subject matter of the contract, viz., that which is to be sold or done under the contract, must be exactly described so as to be readily identified. If land is sold the land should be accurately described; if goods, the goods should be fully described, etc.

(c) The contract may be contained in several writings as correspondence between the parties, but the letters forming such correspondence must be connected by reference in each one to the other and be complete.

(d) The price or value for the contract must be stated in the contract.

(e) The agreement must be signed by the person to be charged that is, the person who is to be held liable. The signature may be anywhere on the contract and may be in lead pencil or ink. If a person cannot sign he should make his mark in the presence of two witnesses. Signatures to contracts should always be witnessed.

Contracts Not in Writing.

Only the classes of contracts mentioned above need to be in writing in order to be valid, but for the purpose of proving what the terms of a contract are, nothing is so satisfactory as a writing. Oral contracts, i.e., contracts by word of mouth, although valid in law (if not within the classes referred to as required to be in writing) are difficult to prove.

Contracts Under Seal.

A contract for which no valuable consideration is given must be under seal to be enforceable.

Consideration.

Consideration is the property handed over or act done or omitted to be done by each party in exchange for what is given or done or omitted by the other party. Thus money is consideration for goods bought and the goods are the consideration for the money. Likewise work is the consideration for wages and the wages consideration for the work. The value does not need to be adequate. The contract will be enforced even if the value given be ridiculously small or unjustly large, unless one of the parties was placed in a somewhat helpless position. The Courts will not make people's contracts for them, however, and any consideration having any value in the eyes of the law will support a promise under a contract. The consideration may be money, goods, lands or a benefit of some kind passing from one party to the other.

Who May Contract.

Generally all persons 21 years of age or over whether British subjects or aliens may contract. The exceptions are as follows:

(a) Alien Enemies.

These would include all subjects of states with which the British Empire is at war. They cannot without leave from the Crown make any fresh contract or enforce any existing contract. Such leave has been given to alien enemies residing peaceably in Canada who comply with the regulations as to reporting themselves, etc.

(b) Infants.

Persons under 21 years of age cannot be held liable upon contracts they enter into or for money lent to them unless they are for necessities, i.e., articles necessary for them in their condition of life, as food, necessary clothing, school books for which they are liable. But they may, upon coming of age, ratify and be bound by such contracts.

(c) Corporations.

These can only enter into such contracts as their charters permit. (See chapter on Companies).

(d) Lunatics and Drunken Persons.

These persons are liable upon contracts entered into by them unless they can prove that the other contracting person knew at the time of the contract that they were so drunk or insane as to be unable to be conscious of what they were doing and were thus unable to contract intentionally.

(e) Married Women.

These may contract and be held liable to the extent they are possessed of property, lands or goods, separate and distinct from their husband's. A husband is only liable for his wife's contracts or debts when she contracts as his agent or for necessities with which he has neglected or refused to supply her. (See Husband and Wife).

What May Render a Contract Void.

(a) Mistake.

Both parties to a contract must be mistaken as to important matters connected with the contract before it can be voided by either of them. If both parties for instance are under the impression that the thing they have in mind and about which they are contracting, such as a ship at sea, is in existence when in fact it has ceased to exist, the contract is void from the beginning. In all other cases where only one party is mistaken he can have the contract set aside only where the other person knowingly contributed to the mistake.

(b) Fraud and Misrepresentation.

Where one party knowingly or innocently deceives or misleads the other party as to something in the contract which is of such importance to the mind of the party misled that he would not have entered into the contract, had he known the truth, he may be relieved from his contract. Misrepresentation occurs where the party representing does not know that his representations are incorrect, and fraud where he does know that his representations are

false, or does not know them to be true, and makes them without caring whether they are true or false. In either case if the misrepresentation concerns things or circumstances which go to the root of the contract the contract may be dissolved, but if they concern matters of lesser importance, they only give the injured party a claim for damages, and in the case of misrepresentation he has a case for damages only if the misrepresentation amounted to a warranty.

(c) **Physical Force.**

Where a person is compelled against his will to sign a contract by the use of physical force he is not bound.

(d) **Illiterate Persons.**

When blind or illiterate persons without any independent advice have the terms and contents of a contract misrepresented to them so that they think they are signing something altogether different from the contract they do sign, they are not bound. This only applies to blind and illiterate persons (Person who cannot read) and ordinarily educated persons who can read cannot escape liability on contracts they sign by saying that they did not know the contract contained what it did.

(e) **Presumption of Undue Influence.**

Certain relationships such as solicitor and his client, medical adviser and his patient, parent and child, guardian and ward, parishioner and spiritual adviser, clergyman or priest, require that dealings between any persons of these groups must be free from any suspicion of unfair advantage and the person seeking to enforce them must prove that sufficient value was given for the contract and that advantage was not taken of such relationship.

(f) **Contracts in Breach of Statute.**

Contracts in breach of a statute will not be enforced.

(g) **Illegal Contracts.**

Wagering (Betting) contracts will not be enforced neither will contracts for which the value given is some immoral consideration. Contracts restricting a person's

freedom to marry whomsoever he or she will, or in general restraint of trade, such as promising never to engage in any business again, will not be enforced. But contracts depriving a person of something in case he marries a particular person and restricting a person from carrying on business in a limited area for a definite length of time will be enforced.

Assignment of Contract.

No person may without the consent of the other party to a contract, rid or relieve himself of his liabilities thereunder by assigning or transferring such liabilities to another.

Benefits arising under a contract, such as moneys due under it, may be assigned.

Whenever the benefits of a contract, such as moneys payable under it, are assigned, the person to whom the benefits are assigned should forthwith give notice in writing of such assignment to the party to the original contract from whom the benefits are to be received. It is advisable to do this in any event.

An assignee of the benefits of a contract may sue in his own name upon the original contract.

Altering Written Contracts.

By Alterations in Writing.

After a contract is signed and executed it can be altered only by consent of both parties. Such alterations may be written between lines or on the margin if the alterations are not extensive. If they are, a new contract should be drawn up.

Alterations by Word of Mouth.

Where a contract has been made in writing, its terms cannot be varied, altered or contradicted by other terms agreed upon by word of mouth. Exceptions to this rule are as follows:

(1) Additional terms of a contract not varying or inconsistent with any of the provisions of the written contract, entered into by word or mouth may be considered as

forming part of a contract which is partly in writing and partly oral.

(2) Terms of a contract may be explained by oral evidence.

(3) A usage or custom though not mentioned in the contract, may be shown to have been intended to be part of the contract.

(4) Where both parties are mistaken as to matters connected with the contract, or by mistake of both parties a term or terms of the contract does not express their real intention, the contract may be altered and enforced in accordance with the real intention of the parties.

Second Contract.

If after a contract has been entered into by the parties to it, another contract referring to the same matter is entered into which is more or less at variance with the earlier contract, the later contract will be held to have superseded the earlier contract and only the second one will be enforceable. Two inconsistent contracts cannot stand side by side and both be valid and enforceable.

Discharge of Contract.

Contracts are discharged by

1. Both parties performing all they have to do under it.

2. By both parties mutually discharging each other. The discharge should, preferably, be in writing.

3. By the contract becoming by fault of neither of the parties impossible of performance. For instance, if the contract be to construct a building and the armies of an enemy made such construction impossible. Or if the contract be for personal services and the party contracting to serve becomes disabled or dies.

4. By a new and inconsistent contract. (See above).

5. By a provision within a contract providing for termination. For instance, where a contract of service provides that it may be terminated by notice a notice delivered pursuant to the contract terminates it.

6. When either party refuses to perform his part or by his own act makes performance of the contract by him impossible, the other party will have, according to the circumstances of the case, the right to compel performance if it is a contract for the sale of lands or stock of a company or sometimes goods, but never of personal service or building contracts, or if performance cannot be enforced he may treat the contract as at an end and bring an action for damages for its breach. This part of the law of contract involves questions of great difficulty and further discussion of it is outside the scope of this book.

COMPANIES.

A COMPANY is an organization of people associated together to carry on a business enterprise and incorporated by law.

Kinds of Companies.

Private Companies.

Companies composed of a few members who do not offer the company's shares for sale to the public.

Public Companies.

Companies having usually many members who take no part in carrying on the business which is carried on by the directors. These companies offer their shares for sale to the public.

Companies are also known as

Limited Companies.

Companies in which the liability of each shareholder is limited to the amount he still owes in payment for his shares.

Unlimited Companies.

Companies in which there is no such limit.

Companies Limited by Guarantee.

Companies in which the liability of their members is limited to a certain amount beyond what they owe on their shares, for example, Banks, the shareholders in which are

always under a double liability (see chapter on Banks and Banking).

Limited companies are those almost universally met with. The last two kinds of companies seldom occur.

A Company is a Legal Person.

A company has in the eyes of the law an individual existence apart from that of its members. It is an artificial person and being created by law has no powers other than those given it by law.

Difference Between a Company and a Partnership.

A company differs from a partnership in that the members of a company are generally liable only to the extent of the amount remaining unpaid upon the shares held by them, while partners are personally liable to an unlimited extent for the debts of the partnership (see chapter on Partnership).

Incorporation of Companies.

Companies are called into existence by means provided by Provincial and Dominion Acts called Companies Acts. Provincial companies can probably carry on business anywhere, i.e., in other provinces, in other parts of the Empire or in foreign states if the law of such other provinces or countries will admit them. It is, therefore, necessary to secure a Dominion charter only when the objects of the company are connected with matters over which the Dominion Parliament has complete exclusive control (see chapter on the Government of Canada) or where the objects contemplate business which cannot be carried on in one province only.

Although the prescribed procedure for incorporation is comparatively simple and a man of ordinary business experience might comply with the forms prescribed for incorporation, the chances are that through the want of skilled legal advice serious errors would be committed. The services of a solicitor are, therefore, indispensable in the incorporation and subsequent organization of the company.

Incorporation in Alberta, British Columbia and Saskatchewan.

To incorporate a limited joint stock company in these provinces there must be filed with the Registrar of joint stock companies (referred to as the Registrar hereafter) two documents called respectively Memorandum of Association and Articles of Association.

(a) Memorandum of Association.

This is a document containing (1) the proposed name of the company having the word "limited" at the end thereof, (2) the objects of the proposed company, that is the nature of the operations of business the company intends to carry on, (3) the place in the province in which the head office is to be situated, (4) the time the company is to exist if for a certain length of time, (5) a declaration that the liability of the members is limited, (6) the amount of the capital of the company, the number of shares into which it is divided and the par value of each share. The Memorandum constitutes the charter of the company.

Each subscriber to the Memorandum of Association must take at least one share, must sign the Memorandum and mark after his name the number of shares he takes. In Alberta and Saskatchewan at least three persons must sign the Memorandum of Association, in British Columbia the Memorandum must be signed by five persons in the case of a public company and two in the case of a private company.

(b) The Articles of Association.

These contain the by-laws of the company. They provide for the issue and allotment of shares, meetings of shareholders and directors, powers of directors and, generally, matters connected with the rules of internal procedure by which the company's business is administered. The Articles may or may not be filed with the Registrar but generally are. They are signed by each person applying for the incorporation of the company.

(c) The Certificate of Incorporation.

After the Memorandum and Articles of Association are filed the Registrar, if all is in order, issues a certificate

permitting the company to commence business. This is evidence that the requirements of the law as to incorporation have been complied with.

(d) **Name of the Company.**

No company will be incorporated having a name similar to or the same as some other company incorporated or carrying on business in the province. Care must, therefore, be taken to choose a distinctive name.

(e) **Seal.**

A seal should be obtained at once for the company as documents executed by the company must generally be under the company's seal.

(f) **Limited.**

The word "limited" must be used after the company's name on all signs, notices, advertisements, cheques, receipts, letterheads and other company publications and wherever the company's name appears on offices or places of business which the company occupies.

(g) **Powers.**

The powers of the company are those set out in the Memorandum of Association. The company can do nothing outside of those powers.

Incorporation in Manitoba.

Incorporation of companies is obtained after filing a petition containing practically the same statements as are contained in the Memorandum of Association mentioned above. The petition must be signed by at least 5 persons who must each take at least one share.

The petition is filed with the Provincial Secretary and if all is satisfactory Letters Patent are issued. Such Letters Patent constitute the Charter of the company. Incorporation is not, however, complete until by-laws are framed similar to the Articles of Association above mentioned and adopted by the Company.

Incorporation of a Dominion Company.

This is accomplished by filing with the Secretary of State for Canada a petition similar to that required in

Manitoba, together with a Memorandum of Agreement and Stock Book. Letters Patent are then issued, constituting the charter of the company and entitling it to carry on business anywhere in Canada.

Incorporation by Special Act.

This is effected by either the Parliament of Canada or the legislature of a Province passing a special Act called a Private Act, in which the company's powers, privileges, etc., are set out in part, the remaining powers, etc., being contained in provisions applicable to all companies.

Cost of Incorporating a Company.

(a) Legal Fees.

These depend upon the size and importance of the company to be incorporated and the number and extent of consultations, attendance upon meetings, preparation and revision of company papers, contracts, minutes, etc. No tariff of fees has been agreed upon or settled by law as in the case of actions at law. Generally for small private companies where there is little to do but obtain the charter the fees do not amount to more than \$100. It would be well in all cases to have an understanding when a solicitor is engaged as to probable fees to be charged.

(b) Government Fees.

Alberta.

These fees must be paid to the Government before a company can be incorporated and are as follows:

Capital of company not over \$20,000, a fee of \$50.

Capital between \$20,000 and \$100,000—\$50, plus \$5 for every \$5,000 of capital over \$20,000.

Capital between \$100,000 up to \$600,000, \$90, plus \$3 for each \$10,000 of capital over \$100,000.

Additional fees of \$5 and \$2 must be paid for publication of the certificate of incorporation and for filing articles of association, respectively.

Saskatchewan.

The same fees but substitute \$40 for \$50 in the first fee.

Manitoba.

There is no fixed tariff but fees are regulated by the Government varying with the size of the company's capital.

British Columbia.

Capital not over \$10,000 a fee of \$25.

Capital between \$10,000 and \$25,000, \$25, plus \$5, for each \$5,000 of capital over \$10,000.

Capital between \$25,000 and \$500,000, \$40, plus \$2.50 for every \$5,000 of capital over \$25,000.

Organization of a Company.**(a) Private Companies.**

These are companies composed of a very few individuals, although there must always be at least the required number of shareholders above mentioned. These companies do not offer their shares to the public, and are consequently excused from complying with a very large number of provisions, such as the filing of a prospectus and other requirements for the protection of the public. After incorporation of a private company a small amount of formal organization is advisable, such as holding the preliminary meetings prescribed below, the signing and sealing of any agreements the company is entering into such as the taking over of a business and after that practically the only thing required is to file a statement of annual returns mentioned below. All contracts entered into should be executed under the company's seal and should be authorized by a resolution of the directors regularly passed at a meeting of the directors; proper minutes of all such meetings are kept. There should be kept a company seal, minute book, in which minutes of all meetings are entered up and contracts affixed to the pages of the book, a Stock Subscription Book in which the amount of stock held by each shareholder with the amount paid thereon is entered. In addition there should be kept the ordinary books of account kept by any business.

(b) **Public Companies.**

By reason of these companies offering their shares to the public for subscription, certain requirements are imposed on them, such as filing a prospectus and other statements with the Registrar of Companies. These provisions aim at securing publicity for the company's affairs, its prospects of making profit, the persons who as directors are to conduct its business and all facts which persons who are induced to subscribe to its shares should be aware of. Below is given an outline of the manner in which a company is organized. When the company is being launched the services of a solicitor, preferably a skilled company solicitor, are indispensable. This is true of both private and public companies.

(c) **Provisional Directors.**

Those who sign the incorporation papers of the company become its provisional directors. Their tenure of office is, however, usually short lived. They usually retire at the first meeting of the company's shareholders.

(d) **Company Meetings.**

The meetings in which the company is organized are as follows and are held in the order given below.

(1) **Meeting of the Provisional Directors.**

After the company's charter has been granted, this meeting is called for the purpose of calling the first general meeting of all the shareholders of the company called the Statutory meeting because the law requires it to be called within a certain time after the company is incorporated. With the notice calling the meeting must be forwarded a report of the provisional directors of the company's affairs to date. This report must be filed with the Registrar.

(2) **Statutory and General Meeting.**

This meeting is called in order to inform the shareholders as to how the company has been floated and permit them to take matters into their own hands. A temporary chairman and secretary of the meeting are selected, the incorporation papers and charter of the company and the by-laws and seal are approved. Resolutions are passed

for the acquisition of property and permanent directors are then elected. The meeting then adjourns till after the directors hold their meeting.

(3) Directors' Meeting.

The newly elected directors elect officers among themselves. Resolutions are passed respecting the amount of stock to be issued, the calls required, the issue and signature of stock certificates, the selection of a bank, etc., and the carrying out of any resolutions of the company respecting the purchasing of property.

An adjourned meeting of the shareholders is then held to ratify the resolutions of the directors.

(4) Ordinary General Meetings of Shareholders.

These must be called yearly and no more than a certain time must elapse between such meetings or a penalty will be imposed.

(5) Extra-ordinary General Meetings of Shareholders.

The directors may call an extraordinary meeting at any time of their own will, and must do so if the shareholders require it. Each shareholder must be notified in the manner prescribed in the company's by-laws. These shareholders' meetings are the means by which the shareholders control the directors who transact and direct the ordinary business of the company. Questions are decided and resolutions passed by votes of a majority of shareholders present in person or by proxy (a proxy is the written authority from one shareholder to another to vote for him at a shareholder's meeting in his absence). If the by-laws of the company require a quorum no less than that number can transact business at a meeting.

Prospectus.

Public companies are required to file within a certain time with the Registrar a document called a Prospectus or a statement similar to one. No subscriber for shares is liable or can be compelled to pay for the same unless before he subscribed he was handed a copy of the Prospectus.

The Prospectus must contain a concise statement of the company's incorporation, management, prospects, etc., and be signed by all of the directors. If the prospectus contains any false statement or misrepresents any matter mentioned therein each director will be personally liable to any shareholder damaged thereby and if such shareholder acts promptly he can have his subscription for shares cancelled.

Turning Partnership or Small Business into a Limited Company.

The advantages of doing this are obvious. Partners or individuals in business are liable for all debts and obligations of the business. Shareholders in a limited company are liable only for the amount unpaid upon their shares. If money is to be borrowed bonds or debentures of the company can be issued without the incurring of any personal liability by the shareholders.

The partners or the owner of the business together with such others as make up the number required by law are usually the applicants for incorporation. After incorporation, an agreement is entered into between the owner or owners of the business and the company whereby the company takes over the assets, stock in trade, good will, book debts, equipment, etc., the company assuming with the consent of the creditors of the former business the liabilities of such former business and the proprietors of such business receiving payment in shares of stock in the company in the proportion in which they were interested in the assets transferred. Note that the owners of the business whose assets are transferred cannot relieve themselves of the liabilities of the former business and the company become liable for the same, except by the consent of all parties including the creditors of the former business.

Shares.

The capital stock of a company is contributed by the members of the company and the proportions of such capital to which each member is entitled are called shares.

(a) Kinds of Shares.

Shares are either common, preference or deferred. Preference shares are guaranteed a specified dividend prior to other shares. Deferred shares are sometimes issued giving their holders a large share of the profits after the holders of preference and common shares have received a dividend.

(b) Application for Shares.

A person desiring to purchase shares in a company signs an application for shares stating the number he wishes and the amount payable on such shares. The directors consider these applications and if accepted the person applying is allotted the number of shares applied for and is notified in writing to that effect. Printed forms of application are usually supplied by the company. Until the applicant for shares receives notice that the shares applied for have been allotted to him he is not liable to pay for them.

(c) Issue of Shares at a Discount.

As a general rule shares cannot be issued at a discount, that is, as fully paid when in fact only part of the par value has been paid on them. The shareholders who hold such shares are liable to creditors of the company for the amount unpaid. In Alberta, Saskatchewan and British Columbia shares may be issued at a discount in the case of mining companies the memorandum of which expressly provides for issue at a discount. In Manitoba shares may be issued at a discount, if such issue be sanctioned by two-thirds in value of the shareholders at a special or general meeting. In Alberta and Saskatchewan a commission may be paid on a subscription for shares if the articles of association so provide. In British Columbia such provision may be in the memorandum or articles of association.

(d) Who May Hold Shares.

When shares are paid for in full or fully paid up they may be held by any person. Only persons who may contract may apply for and hold shares which are not fully

paid up (see chapter on Contracts). No company can hold the shares of another company unless its charter permits it.

(e) **Transfer of Shares.**

This is effected by the holder of shares signing a transfer. A form of transfer is usually printed on the back of the share certificate. The transfer must be approved by the directors who may disapprove if the shareholder is indebted to the company. -

(f) **Sale of Shares.**

In Alberta, Saskatchewan and Manitoba.

In Alberta, Saskatchewan and Manitoba it is unlawful for any person or company to sell or attempt to sell "in the course of continued and successive acts", or advertise for sale shares or bonds (except government, provincial and municipal securities, and shares listed upon an exchange approved by the Board of Public Utility Commissioners or (in Saskatchewan) the Local Government Board or (in Manitoba) the Public Utility Commissioner without first obtaining from the said Boards or Commissioner a certificate and a license for the selling agent, if there be one. Before such certificate can be obtained the applicant must file in the office of the Commissioners, together with a fee of \$5, a detailed statement of the plans and financial condition of the company and a copy of its charter and by-laws. Since the prohibition is against selling without a certificate "in the course of continued and successive acts" a company or person may make a private occasional sale of shares without first obtaining the certificate, unless the company is selling or attempting to sell the whole or any part of its own shares or bonds. Any person violating the above provisions is liable, on conviction before a magistrate or two justices of the peace, to a fine of \$500 or imprisonment for six months.

(g) **Calls.**

A percentage of the price of the shares is usually paid upon application. Further portions of the amount still

due must be paid at such times as the directors require. These portions of the price still due on shares and called in by the directors are known as calls. If these calls are not paid at the time specified the directors may enter suit for them.

(h) Share Certificates.

Stock or share certificates are issued as evidence that the person named therein is a shareholder. These certificates are under the company's seal and are signed by two officers or directors of the company. They should state the name of the shareholder, the number of the certificate and the number of shares which it represents.

(i) Forfeiture.

If a call is made on shareholders and the amount of the call is not fully paid on the day specified in the notice of call, then after the directors have notified the shareholders in the manner provided in the company's by-laws the shares may, if the shareholder refuses to pay the call, be forfeited to the company.

(j) Bonds and Debentures.

When a company borrows money by mortgaging its property it divides up the loan into portions called bonds or debentures. Most companies are permitted by their by-laws to borrow money. The holders of these bonds and debentures are mortgagees of the company and have the same rights in the recovery of their loan as a mortgagee of land.

(k) Care in Subscribing for Shares.

Many people have lost money by purchasing shares which have subsequently proved to be valueless. Such people often blame the government for lack of supervision of companies, or call the promoters who sold the shares swindlers and other hard names. Almost invariably the real fault lies with the purchaser himself. No man or woman should buy shares in any company without first making thorough enquiries into the affairs of the company, its directors, its capital, the nature of its business, its

prospects of making profits and paying dividends. 'The law cannot protect a man from his own carelessness or make good for him his errors in judgment.

Directors.

(a) Election.

The permanent directors for the year are elected in the manner prescribed in the company's by-laws at the first statutory meeting of the shareholders mentioned above. The articles or by-laws usually provide for the retirement each year of a certain number of the directors and election of others at the annual general meeting.

(b) Powers.

The directors control the ordinary business of the company. They are accountable to the shareholders whom they represent and act for. A small board of directors is generally sufficient. They should be and generally must be shareholders of the company. A director cannot retire from office except with the consent of his co-directors.

(c) Meetings of Directors.

Directors may meet and despatch business and adjourn as they think fit. A director may at any time summon a meeting by notice. They also determine what constitutes a quorum for a meeting. They must vote in person and not by proxy. Where the votes are a tie the chairman has a casting vote. A majority of votes are necessary to carry resolutions. Minutes of all meetings should be kept.

(d) Disqualification of Directors.

The articles or by-laws of a company generally provide that a director shall be disqualified if he holds any other place of profit under the company or becomes insolvent or ceases to hold the number of shares required to qualify or fails to attend to his duties. It is now customary to provide in the articles that directors may contract with the company. In the absence of such a provision such a contract is not binding on the company if it wishes to avoid it.

(e) **Liability of Directors.**

The articles or by-laws of a company may provide that the directors shall be liable to an unlimited extent to the creditors of the company but after any such directors leave the directorate they are liable only as ordinary shareholders for debts contracted after they leave. This is also the case if a director resigns more than a year previous to the winding up of the company. Directors are also personally liable to an action for damages for deceit in respect of false statements contained in the company's prospectus. Directors may purchase property from and sell to the company if the articles so provide, or if the company in general meeting approves of the transaction after full disclosure thereof.

(f) **Consent.**

No man may be made a director without his written consent and if his liability for the company's debts is to be unlimited he must be notified to that effect when elected.

(g) **Interference by Shareholders.**

Shareholders have no right to interfere with what a director does within his powers as a director. They may however, review and criticize such acts at the shareholders' general meeting. If loss occurs to the company through acts done by the directors acting in good faith and within their powers the shareholders cannot hold the directors liable.

(h) **Chief Officers.**

The President is the chief executive officer. He presides as chairman of meetings of the Board of Directors. If he is unable to give all of his time to the management of the company's affairs a managing director is appointed who takes charge of the company's business.

(i) **Liability of Company.**

The company is liable for all acts of the directors done within the scope of their authority, i.e., acts which the company is permitted to do by its memorandum and articles of association and by-laws.

Foreign Companies.

A foreign company, also called an Extra-Provincial Company, is so far as any province is concerned a company incorporated outside of that province, except one incorporated by the Parliament of Canada.

A foreign company cannot hold lands, sue creditors, or carry on business in any province unless it is licensed or registered in that province. Soliciting orders by commercial travellers is not "carrying on business" if the company fills the orders outside the province and has no warehouse or office in it. It seems that Dominion companies may be required to pay a license if the license is also exacted of companies incorporated by the province imposing the license.

Winding Up Companies.

Companies come to an end in one of two different ways viz:

(1) Time Running Out.

The company's charter may limit its existence to a certain length of time. Such limitations are rare. Nearly all companies are supposed to have a perpetual existence.

(2) Winding Up.

Any company's existence may be terminated by a procedure called a winding up. An official, known as a liquidator is appointed, the company's assets sold or realized upon, its creditors paid, and the residue, if any, divided among the shareholders. The liquidator of a company being wound up occupies the same position as an assignee in an assignment for the benefit of creditors.

Kinds of Winding Up.

(a) Voluntary Winding Up.

This is commenced by the shareholders themselves. The company may pass a resolution that the company be wound up. The same or another resolution may appoint the liquidator. Notice must be given to all creditors and if they see fit, they may request that some other liquidator than the one named be appointed. After the liquidator is

appointed the winding up is carried on by the liquidator under the control of the shareholders and directors. The liquidator calls in all of the amounts due and payable by the shareholders on calls, sells and realizes on the assets, pays creditors and the costs of the winding up and distributes the balance, if any, among shareholders. The liquidator may at any time apply to the court for direction and assistance.

(b) Voluntary Winding Up Under Supervision of the Court.

The creditors or shareholders may at any time during the winding up, petition to the court to supervise the winding up. The liquidation under such supervision goes on as before only that the court may appoint some other liquidator or committee of inspection and require the liquidator to report to the court from time to time.

(c) Compulsory Winding Up by the Court.

If a company is insolvent, that is unable to pay its debts, it may either make an assignment for the benefit of creditors (see chapter on Assignments, etc.) if the creditors consent, or, if the creditors do not consent to an assignment they can compel the company to be wound up by the court under the provisions of the Dominion Winding Up Act. Dominion companies must also be wound up under this Act.

The company will be wound up by the courts under the provisions of the Provincial Winding Up Acts whenever:

(a) The company in general meeting passes a resolution requesting the court to wind it up.

(b) The company neglects to file the yearly report or to hold the statutory meeting.

(c) The company either does not commence business for a year or suspends for a year.

(d) The company's membership is reduced below the minimum required by law.

(e) The court deems it advisable to wind the company up.

If the company is insolvent any creditor having a claim of \$200 or over or in the cases (a) to (c) any shareholder may petition the court to wind the company up. Before a creditor petitions, the company must have refused for 60 days to pay the debt.

Upon a winding up order being granted and a liquidator being appointed the company only continues to exist for the purpose of the winding up and in such winding up no one but the liquidator and the court has any authority or right to interfere.

The liquidator proceeds to sell and realize on all the assets, make calls from shareholders who still owe any amount of money in respect of shares held by them. Shareholders who have paid for their shares in full incur no further liability.

The liquidator then publishes a notice requiring all creditors to file their claims with him within a certain time.

When the assets of the company have been realized or as much of such assets as may be have been turned into cash the proceeds are distributed as follows:

First.

Expenses of winding up; the liquidator's remuneration and expenses and legal fees.

Second.

Salaries overdue and unpaid but earned covering a period not exceeding three months prior to the winding up order.

Third.

Costs of execution creditors and others who had seized goods of the company before the winding up.

Fourth.

The general creditors of the company which includes claims for debt or damages, taxes and rent where no distress made before the winding up.

Where goods of the company are seized for overdue rent or taxes before the winding up the landlord or municipi-

pal authority retains such goods absolutely and can sell and retain the proceeds.

The holders of securities, that is creditors who are secured, have the same rights as in an assignment for the general benefit of creditors. Mortgagees of the company, the holders of the company's bonds and debentures, have the same rights as ordinary mortgagees; they may either foreclose on their mortgage or assign it over to the liquidator at a price settled upon.

The winding up of a company involves a vast number of incidents, the discussion of which is outside of the scope of this book. Note carefully that as soon as a person becomes a shareholder in a company he becomes liable at any time if the company is wound up to pay up the full amount of shares subscribed and even though he has been deceived when subscribing unless he promptly, when he discovers the fraud, seeks to cancel his subscription for shares, he will be unable so to do after a company is ordered to be wound up.

DAIRY ASSOCIATIONS AND REGULATION OF DAIRIES AND CREAMERIES.

Formation.

Alberta, Saskatchewan, Manitoba.

ASSOCIATIONS under the Dairy Acts may be formed by any five or more persons for the purpose of manufacturing butter or cheese or both, or providing cold storage for the safe keeping thereof or (in Alberta only) for the purpose of fattening poultry or (in Saskatchewan only) the manufacture of ice cream and providing cold storage therefor.

In Alberta they must make, sign and acknowledge before any person empowered to administer oaths or affidavits to be used in the Supreme Court of the province and file in the office of the Provincial Secretary a declaration

in writing and such declaration shall state the name of one of the persons signing the same as having been appointed provisional secretary of the Association. The declaration must designate one or more places in the province where business is to be carried out. Upon the filing of the declaration the members become a body corporate by the name therein described, but no declaration shall be filed unless shares to the extent of \$1,500 have been subscribed of which not less than \$1,000 have been paid up by the persons signing such declaration and evidence of such subscription and payment shall be filed with the declaration.

In Saskatchewan they must sign a memorandum of association containing the following particulars: (a) The name of the proposed company with the words "limited" as the last word thereof; (b) The objects for which the proposed company is to be established; (c) The place in the province where the head office of the company is proposed to be situated; (d) A declaration that the liability of the members is limited; (e) The amount of capital for which the company proposes to be incorporated divided into shares of a certain fixed amount subject to the following regulations, namely: that no subscriber shall take less than one share, and that each subscriber of the memorandum of association shall write opposite his name the number of shares he takes and shall be the bona fide holder in his own right of the share or shares for which he is the subscriber in the memorandum of association; (f) The name of such one of the subscribers as has been chosen to be the provisional secretary of the company; (g) That the business of the company is to be conducted on the co-operative plan and in accordance with the provisions of The Dairyman's Act.

The memorandum of association shall be signed by each subscriber in the presence of and attested by one witness at least.

Upon the registration of such memorandum, the minister issues a certificate and publishes a notice of the fact of such issue in The Saskatchewan Gazette.

The registration fee is \$10, which must accompany the memorandum of association.

Upon the issue of such certificate, the subscribers of the memorandum of association, together with such other persons as may thereafter become shareholders of the company, become a body corporate under the name set forth in the memorandum.

In Manitoba the founders must sign, and acknowledge before a notary public, commissioner for taking affidavits or justice of the peace, in duplicate, and send to the office of the Minister, a declaration in writing stating the name of one of the persons signing the same as having been appointed provisional secretary of the association; and, upon the filing of the declaration in said office, the members of the association become a body corporate by the name therein described; provided, however, that (a) no such declaration shall be filed unless shares to the extent of four thousand dollars have been subscribed for by the persons signing and not less than twenty-five per cent. of the amount of his subscription paid up by each of the subscribers, and evidence of such subscription and payment shall have been produced to the Minister by statutory declaration of the provisional secretary, showing what amounts have been paid on account of their respective subscriptions and whether in cash or otherwise; (b) no such declaration shall be filed by the Minister and no creamery or cheese factory erected by the subscribers until the site and the plans and specifications of the proposed building or buildings shall have been first approved by the Minister.

Powers.

In all three provinces such associations may acquire and hold real estate for the purpose of carrying out their objects and may sell, mortgage or lease the same. In Alberta they have full power to do all necessary acts and enter into all necessary contracts for the purposes of their business and to borrow money for the purpose of their business and to issue bonds or debentures for the repay-

ment of the same with interest and such bonds of debentures may be secured upon the real and personal estate of the association including called or uncalled capital and such bonds may be issued in accordance with the rules of the said association and shall be payable at such time or times as may be therein expressed and may be mortgaged, sold or hypothecated by the said association in accordance with any provisions in that behalf included in the said rules but such bonds shall not be issued until the same shall have been approved by the Lieutenant Governor in Council and a notice of the intended issue of the same in writing shall have been deposited in the office of the Provincial Secretary.

In Saskatchewan they may make, sign, and accept promissory notes, and bills of exchange in the usual conduct of business execute and deliver chattel mortgages, liens or bills of sale on or of the stock in trade and other personal property of the company; issue bonds signed by the president or other presiding officer, and countersigned by the secretary, which bonds may be made payable at such times, in such manner and at such places in Canada and may bear such rate of interest as the directors think proper; issue, sell or pledge all or any of the said bonds at the best price and upon the best terms and conditions obtainable, for the purpose of raising money for prosecuting the company's business; secure such bonds by a mortgage or trust deed upon the whole or a part of its property, real or personal or both, present or future or both, as may be specified therein.

But they shall not: (a) Sell, mortgage or lease any of their real estate; (b) Execute or deliver a chattel mortgage, lien or bill of sale upon their stock-in-trade or other personal property; or (c) Issue bonds; without in each case first obtaining the sanction of not less than two-thirds in value of the shareholders present in person or by proxy at a special meeting of the company duly called for considering the same, of which meeting at least ten days' notice shall be given by mailing to each shareholder a notice stating, in addition to the time and place of holding the meeting, the special objects thereof.

In Manitoba before the association sells, mortgages, leases, or otherwise disposes of any real property owned by it it must be authorized to do so at a general meeting of the association, of which meeting at least ten days' notice has been given by mailing a notice to each member stating therein the objects of such meeting. It may also upon authority of a by-law by the directors enter into contracts, sign, make and accept notes, bills of exchange, chattel mortgages, liens, bills of sale or securities upon stocks or instruments of such nature and relating only to its effects other than real estate.

Organization.

Alberta, Saskatchewan and Manitoba.

Within one month after the filing of such declaration as aforesaid a meeting of the members of the association shall be called by notice to be mailed or delivered to each member by the provisional secretary at least ten days before the day of meeting and at such meeting or at any adjournment thereof the members of the association shall agree upon and frame a set of rules for the regulation and management of the association.

Approval of Site.

In Alberta no association shall erect any building for the purpose of manufacturing butter or cheese until the site, plans and specifications of such building or buildings have been approved by the minister. In Manitoba such approval must be given before the declaration forming the association can be filed.

Liability of Shareholders.

Alberta, Saskatchewan and Manitoba.

The liability of the shareholders is limited to the amount unpaid in respect of any share or shares held by him or her and any shareholder having fully paid up the amount of his said share or shares shall be absolved from all further liability. In Saskatchewan a shareholder is not liable to any action in respect of his liability until an execution against the association has been returned unsatisfied in whole or in part.

Returns to Government.**Alberta, Manitoba and Saskatchewan.**

Every association must not later than January 31st in each year, make a return to the Provincial Secretary of its affairs during the year ending the thirty-first day of December preceding. In Saskatchewan such returns as the Minister of Agriculture may require must be made to him on or before January 10th in each law. In Manitoba such return must be made to the Minister of Agriculture not later than Nov. 30th of each year, in respect to the year ending on the preceding October 31st.

Loans to Association.**Alberta.**

The Minister of Agriculture out of the moneys appropriated by the Legislature in that behalf may authorize the making of a loan (not exceeding \$1,500) to any association and determine the amounts and conditions upon which such loan may be made and repaid.

Saskatchewan.

In Saskatchewan the Minister may lend such sum as the Lieutenant-Governor-in-Council may authorize to be lent on account of the cost of machinery required by the company or association. If the money lent is more than sufficient to pay for such machinery or meet the balance remaining unpaid thereon, the excess may be used to defray the cost of or claims against the creamery building. No such loan shall exceed the sum of \$3,000, nor shall the aggregate of such loans at any time exceed \$20,000.

Failure to Supply Milk.**Alberta and Saskatchewan.**

Any person who wilfully violates a contract to supply milk or cream to an association may on summary conviction thereof before a justice of the peace in addition to any civil remedy available against him be ordered to pay to such association by way of a penalty a sum not exceeding \$25.00, together with costs of prosecution.

In Saskatchewan.

In case it is shown that an association has violated the provisions of the preceding section, the minister may, whether or not proceedings have been taken for prosecution of the offender, cancel its license (if any) and certificate of incorporation.

Any person engaged in the business of selling milk or cream or of manufacturing the same into butter, cheese or ice cream, who discriminates between different sections, districts, localities, municipalities, or parties by purchasing such milk or cream at a higher rate in one or more of such sections, districts, localities or municipalities than he pays for a similar grade of the same commodity in another or others, or by paying a higher price therefor to one or more persons than to another or others, after making due allowance in either case for any difference there may be in the cost of transportation from the respective points of purchase to the point of manufacture, shall be guilty of an offence and liable, on summary conviction to a penalty not exceeding \$200.

Dairy Commissioners.

Alberta, Saskatchewan and Manitoba.

Any dairy commissioner or inspector must at all reasonable hours have free access and admission to all creameries and cheese factories and everything contained therein and on the premises and also to the buildings and premises used for dairy purposes by any patron, and (in Manitoba) shall have the right to take samples of milk, cream, butter or cheese for the purpose of testing or analysing same by the professor of chemistry of the Manitoba Agricultural College whose certificate shall be prima facie evidence of the fact contained therein without proof of his signature.

The owner, operator, manager or other person in charge of any creamery or cheese factory, who refuses admission or who offers any obstruction or fails to facilitate the work of inspection, who overreads or underreads the Babcock test or who violates any of the provisions of the

Dairy law, upon summary conviction before any police magistrate or justice of the peace, is liable to a penalty of not less than ten dollars and not more than one hundred dollars. (In Saskatchewan the fine does not exceed \$50 and costs).

No police magistrate or justice of the peace having any pecuniary interest in a creamery or cheese factory as aforesaid shall hear or determine any complaint under the Dairy Act.

Saskatchewan.

No municipal by-law or regulation affecting the production, manufacture or sale of dairy produce, hereafter passed or adopted shall be operative until approved of by the dairy commissioner.

All such municipal by-laws and regulations heretofore passed and not submitted to the dairy commissioner for his approval within three months from the date when the Dairy Act came into force, cease to be operative at the expiration of such three months.

Sanitation and Operation.

Alberta and Manitoba.

The buildings and premises of every creamery and cheese factory must be kept in a sanitary condition satisfactory to any dairy inspector.

All materials entering into the manufacture of butter and cheese must be clean and wholesome and the methods employed in manufacturing sanitary.

The methods of handling and caring for milk, cream and the dairy utensils used by patrons, must be clean and sanitary and satisfactory to any dairy inspector.

Where the butter fat contents of milk supplied to a creamery or cheese factory is determined by the Babcock test, the measuring pipette shall have a marked capacity of 17.6 cubic centimeters.

Where the butter fat contents of cream supplied to a creamery is determined by the Babcock test, the stand-

ard sample of cream taken for testing shall weigh 18 grammes.

Where a composite test is made to determine, by the Babcock test, the percentage of butter fat contained in milk or cream supplied to creameries and cheese factories by any patron, a sample shall be taken from each weighing, and the proportion which such sample bears to the weight of the milk or cream from which it is taken, shall be maintained in the taking of all other samples entering into such composite test.

The samples of milk and cream collected for a composite test from each patron, shall be kept in a cool place, in a separate, tightly stoppered glass bottle or jar plainly labelled with the patron's name.

A record shall be kept of all tests, composite or otherwise, made to determine the butter fat contents of milk or cream, and any patron or any inspector appointed under this Act shall have the right to examine such record at all reasonable hours.

The owner, operator, manager or other person in charge of a creamery or cheese factory shall keep a record of the amount of milk or cream received each day from each patron, and the disposition made thereof; also of the weight of all butter and cheese manufactured daily.

Any person or any inspector appointed under the Dairy Act shall have the right to examine such records at all reasonable hours.

Alberta only.

The owner, operator, manager or other person in charge of any creamery shall make and deliver with every payment to each patron a statement showing among other details—(a) The period which each payment covers; (b) The quantity of milk or cream supplied by him during such period; (c) The butter fat contents in pounds of such milk and cream; (d) The quantity of butter manufactured therefrom; (e) The basis and rate of payment per pound of butter fat or of manufactured butter as the case may be.

Alberta only.

The owner, operator, manager or other person in charge of any cheese factory shall make and deliver with every payment to each patron, a statement showing among other details—(a) The period which such payment covers; (b) The quantity in pounds of milk supplied by him during such period; (c) If payment is based on the butter fat value of such milk then the butter fat contents in pounds must be shown; (d) The basis and rate of payment per pound of butter fat or per hundred pounds of milk, as the case may be.

The owner, operator, manager or other person in charge of any creamery or cheese factory shall make such statistical returns in such form and at such times as the Minister may require.

Closing of Creamery.**Alberta and Manitoba.**

Upon the report of any dairy inspector that a creamery or cheese factory is not in a sanitary condition or that the methods of manufacture are unsanitary the Minister may order the owner, operator, manager or other person in charge thereof to close the same forthwith and it shall be kept closed until the dairy inspector reports that the sanitary condition and methods are satisfactory.

Registration of Owners, etc.**Alberta and Manitoba.**

The owner, operator, manager or other person in charge of every creamery and cheese factory must register in the office of the Minister upon forms to be supplied by him the name, location and nature of the business of such creamery or cheese factory and such other information as to ownership and operation as the Minister may require.

A record of all such registrations shall be kept by the Minister and shall be open to public inspection. No owner, operator, manager or other person in charge not so registered, shall conduct, operate or carry on the business of any creamery or cheese factory without permission from the Minister so to do and such permission may be granted only upon the report of a dairy inspector.

Refusal to grant such permission may be based upon lack of proper equipment or upon unsanitary conditions.

An appeal from the decision of the Minister may be made to the Lieutenant-Governor-in-Council.

Regulations as to Sale.

Manitoba.

(a) Adulteration.

No person shall sell milk for consumption as such containing less than eight and one-half per cent. of solids, not fat, or less than three and a quarter per cent. of butter fat; and no person shall sell cream for consumption as such containing less than eighteen per cent. of butter fat. Every person who violates the foregoing provision shall be liable to a penalty of not less than \$5 nor more than \$25 and, in default of payment, to imprisonment for a period not exceeding two months.

Whosoever shall sell, supply, bring or send to any creamery or cheese manufactory for manufacture any milk diluted with water, or in any way adulterated, or milk from which any cream has been taken, or milk commonly known as "skimmed milk" or milk or cream from a cow which he knows to be diseased or whosoever shall keep back any part of the milk known as "strippings" shall for each and every offence be liable in a fine of not less than \$10 nor more than \$50. In case such penalty or damages are not forthwith paid upon conviction or order, with such costs as shall be awarded, they may be levied by distress and sale of the goods and chattels of the offender by warrant under his hand and seal.

In case of a penalty being imposed on default of payment or sufficient distress the offender may be imprisoned in a common gaol for not less than one day nor more than twenty days, at the discretion of the justice unless such penalty, costs and the charges of commitment be sooner paid.

The penalty or damages when recovered shall be paid over by the justice to the owner, directors or trustees of

the factory where or in respect of which the offence shall have been committed.

Any party aggrieved by such fraudulent conduct as aforesaid may, at his election sue the offender in any civil court of competent jurisdiction and recover from him the amount of damages sustained, and levy the same, with the costs, according to the ordinary practice of the court.

(b) Butter and Cheese Brands.

Every proprietor, firm or corporation operating any creamery in Manitoba shall make use of one or more stencils, stamps or brands on all products of his or their creamery offered for sale. Each one of such stencils, stamps, or brands shall be registered with the Department of Agriculture and Immigration and bear a number furnished by the said Department of Agriculture and Immigration as follows:—(a) For the first quality of butter manufactured, the stencil, stamp or brand may consist of an emblem, device or name, with the name and address of such creamery, but shall contain, with the number allotted by the Department the name and address of such creamery and the words “Manitoba creamery butter”; (b) For a quality inferior to the first, the stencil, stamp or brand may consist of an emblem, device or name, but shall bear the number allotted by the Department.

The proprietor, firm or corporation operating any cheese factory in Manitoba shall register with the Department of Agriculture and Immigration in Winnipeg a stencil showing the name and address of such factory, and having the words “Factory Cheese” and the number of the stencil as furnished by said Department, and shall brand, imprint or impress such stencil on all cheese manufactured at such factory and shipped therefrom.

No maker of dairy butter shall brand his product as creamery butter, and no proprietor, person, firm or corporation who ships or sells butter on consignment or otherwise from any place in Manitoba shall brand dairy butter as creamery butter.

No maker of dairy cheese shall brand his cheese as “Factory Cheese” and no proprietor, person, firm or cor-

poration who sells cheese on consignment or otherwise shall brand dairy cheese as "Factory Cheese."

Every proprietor, person, firm or corporation who ships or sells butter on consignment or otherwise from any place in Manitoba shall make use of one stencil, stamp or brand or more on all butter so shipped or sold as follows:—(a) Where the butter purchased by such proprietor, person, firm or corporation for re-sale was marked "Manitoba creamery butter" the stencil, stamp or brand used may consist of an emblem, device or name, with the name and address of such proprietor, person, firm or corporation so reselling, but shall contain together with the number allotted by the Department the words "Manitoba creamery butter;" (b) Where the creamery butter purchased by such proprietor, person, firm or corporation for re-sale was not marked "Manitoba creamery butter," then the stencil, stamp or brand may consist of an emblem, device or name, but shall bear the number allotted by the Department.

Every such stencil shall have letters and figures not less than three-eighths of an inch in height and one quarter of an inch in width.

Every person who violates any of the above provisions relating to brands, etc., shall be liable to a penalty of not less than \$50 nor more than \$200, and in default of payment, to imprisonment for a period not exceeding two months.

The Minister of Agriculture and Immigration may make such regulations as he may deem necessary for the registering and numbering of such stencils and for the better carrying out of the provisions and objects of the Dairy Act.

British Columbia.

Licenses.

Creameries and dairies are governed by regulations made under the "Dairies Regulation Act."

No creamery or dairy shall carry on business without a license.

No creamery or dairy shall permit any milk or cream to be tested save by a licensed Inspector.

Reports.

Every creamery or dairy purchasing or dealing in any milk or cream shall deliver to the owner thereof, at such time and in such form as may be prescribed by regulation, a just and true account of the amount and value thereof, certified by an Inspector.

Inspectors.

The Minister of Agriculture may issue in such form and for such term and subject to such conditions and to the payment of such fees as he may by regulations approved by Order-in-Council and published in the British Columbia Gazette from time to time provide:—(a) Licences to creameries or dairies and (b) Licences to Inspectors who shall be known as “Inspectors of Milk Products.”

Every Inspector shall pass such examinations and shall perform such duties as may from time to time be prescribed, and in the performance of such duties shall comply with and shall not contravene the regulations and rules for the time being in force.

Testing Machinery.

The Minister of Agriculture may by rules or regulations under this Act prescribe the testing machinery and equipment to be used by creameries and dairies.

The Minister of Agriculture may from time to time make rules and regulations, to be approved by Order-in-Council and published in the British Columbia Gazette, for carrying out the purposes of the Act, including matters in respect whereof no express or only partial or imperfect provisions have been made and every such rule or regulation shall have the force of law as if embodied in the Act.

Any person contravening or committing any breach of or committing any offence against any of the provisions of the Act shall be liable upon summary conviction to a penalty of not less than \$20 and not more than \$100.

EXEMPTIONS FROM SEIZURE UNDER EXECUTION OR FOR RENT.

A PERSON who obtains from a court a judgment requiring some other person to pay him money is known as a judgment creditor and the latter as a judgment debtor. To enforce payment the creditor may obtain from the court an order commanding the sheriff to seize and sell the debtor's goods. This order to the sheriff is called a writ of execution.

In the absence of legislation to the contrary a creditor could sell under execution everything a debtor possessed, leaving him penniless. As a protection against a creation of absolute poverty the Exemption Acts have been passed in order to preserve for the use of debtors the necessities of life and the means of making a livelihood.

These Acts provide as follows:

Alberta and Saskatchewan.

(a) Lands.

The homestead, of not more than 160 acres, is exempt, but any additional land owned by the debtor may be sold under execution. The homestead means and includes the houses and buildings occupied by the debtor as the home of himself and family and also 160 acres of the land upon which the buildings are situated. Residents of towns and cities are entitled to the exemption of the house and buildings occupied by them and also the lots on which the same are situate to the extent of \$1,500. The debtor must actually reside upon the homestead. When he ceases to reside upon it, it ceases to be exempt. A merely temporary absence where the debtor has a bona fide intention of returning is, however, permitted. He may mortgage it and, if it is sold under a forced sale under the mortgage or in any other manner, the proceeds or the surplus of such proceeds are exempt. Also if the premises are destroyed by fire the proceeds of the insurance are exempt. But if of his own free will the debtor sells the homestead, the proceeds of such voluntary sale are not exempt.

(b) Goods and Chattels.

The following goods are exempt:

(1) The necessary and ordinary clothing of the debtor and his family.

(2) Furniture, household furnishings, dairy utensils, swine and poultry to the extent of \$500.

(3) The necessary food for the family of the debtor during six months, which may include grain and flour or vegetables and meat, or animals intended for food (as one ox and two horses or one ox, one horse, one mule).

(4) Three oxen, horses or mules or any three of them, 6 cows, 6 sheep, 3 pigs and 50 domestic fowls, besides the animals the debtor may have chosen to keep for food purposes and food for such animals for the months of November to April inclusive in each year or for such of these months or parts thereof as may follow the date of seizure, if the seizure be made between August 1st and April 30th, following.

(5) The harness necessary for three animals. One wagon or two carts, one mower or cradle and scythe, one breaking plow, one cross plow, one set of harrows, one horse rake, one sewing machine, one reaper or binder, one seed drill, one set of sleighs.

(6) The books of a professional man used in the practice of his profession.

(7) The tools and necessary implements to the extent of \$200 used by the debtor in the practice of his trade or profession.

(8) Seed grain sufficient to seed all his land under cultivation, not exceeding 80 acres, at the rate of 2 bushels per acre, the debtor has the right to choose the seed, and 14 bushels of potatoes.

In Saskatchewan if, since June 24, 1915, the debtor has given a chattel mortgage on any of the chattels mentioned in paragraphs (4) and (5) above he may claim as exempt from seizure under such mortgage the number or part of the number of such chattels which he may hold free from seizure under an execution.

(c) **Debtor's Right to Select.**

A debtor may pick out from all his goods those he wishes to exempt to the number and amount allowed as above.

(d) **Article Sued For.**

If a seizure is in respect of a judgment for the price of any article that article is not exempt.

(e) **Deceased Debtor.**

If a debtor dies his widow and children can claim the same exemptions if they are in the use and enjoyment of the goods and lands.

(f) **Absconding Debtors.**

These exemptions do not apply if a debtor absconds from the province leaving no wife or family behind or where goods are seized in an alimony action. (See Husband and Wife).

Manitoba.

(a) **Lands.**

The homestead of 160 acres, together with house, stable, barns and fences, is exempt, or if the debtor is not a farmer, the actual home or residence valued at not more than \$1,500; if it exceeds in value \$1,500, it may be sold, but \$1,500 must be deducted from the proceeds of the sale and handed to the debtor. If the homestead is over 160 acres, the excess acreage may be sold. The rules as to parting with the homestead and application of the insurance moneys are the same as in Alberta and Saskatchewan.

(b) **Goods.**

(1) Bed and bedding of the debtor and his family and their household furniture and effects not exceeding \$500 in value.

(2) The necessary clothing of the debtor and his family, and fuel for six months.

(3) Twelve volumes of the books of a professional man, axe, saw, gun, and 6 traps.

(4) Necessary food for the debtor and his family for 11 months in his possession at time of seizure.

(5) Three horses, mules or oxen, 6 cows, 10 sheep, 50 fowls and food for them for 11 months (note "horses" includes colts and fillies. Horses over 4 years old are exempt only if used by the debtor in making his living).

(6) Tools, agricultural implements and necessities used by the debtor in the practice of his trade or profession to the value of \$500.

(7) Articles and furniture necessary to the performance of religious services.

British Columbia.

Lands.

Any person possessed of lands may register them as a homestead under a special Act entitled "The Homestead Act" and thereafter such homestead is exempt from seizure under execution in respect of any debt contracted after the homestead is registered under the Act to the extent that the value of such homestead does not exceed \$2,500. For any amount over \$2,500 only so much as exceeds \$2,500 shall be liable to be sold.

Debtor Dying.

If debtor dies without a will leaving a widow and minor children the homestead passes to the widow while the children are under age and while the widow remains unmarried and is exempt from seizure for any debt contracted by the deceased debtor after the property was registered as a homestead.

Abandonment.

A debtor may at any time abandon the homestead by registering a formal document where the homestead was registered and thereafter the homestead shall cease to be exempt and the debtor may sell or dispose of it as he pleases. He cannot, however, sell or mortgage the homestead without the consent of his wife so long as she resides within the Province of British Columbia. Heavy penalties are payable for any false statement under this Act.

(b) Goods and Chattels.

A debtor's goods and chattels to the value of \$500 are not liable to seizure. In case of a seizure the debtor may select goods to the value of \$500 which goods shall be exempt. To secure this exemption the debtor must claim it at the time of seizure. If he allows the goods to be taken he cannot afterwards claim the exemption. The debtor or the sheriff's officer should make a list of such goods. If the sheriff considers that the goods selected exceed \$500, he must notify the debtor to that effect and within one day, unless an agreement is reached, apply to a Justice of the Peace to name a valuator, whose decision shall be final as to what goods are exempt. The valuator must value the goods in the presence of the debtor or after one day's notice to him.

Exemptions From Distress for Rent.

The law is practically the same in each of the four Western Provinces. Where a landlord makes a seizure under warrant of distress for overdue rent the following goods on the tenant's premises cannot be seized:

(1) Fixtures, that is, things fixed to the land (even though the tenant may by his agreement with the landlord have the right to remove them) such as kitchen ranges, coppers, grates, furnaces, and, on a farm, articles fixed to the soil, such as windmills, sheds, which cannot be restored in the same condition as when taken.

(2) Goods not belonging to the tenant but happening to be on the premises to be attended to, repaired, or worked up in the way of his trade, as a horse left with a blacksmith to be shod, a coat delivered to a tailor to be repaired or goods left for safekeeping, etc.

(3) Goods actually at the time in use by some person, as the horse a man is riding, the clothes a person is wearing or tools of trade in actual use.

(4) Goods belonging to a guest at an inn.

(5) Goods in custody of the law.

(6) Wild animals.

(7) Perishable articles such as butchers' meat and where there are sufficient other goods to satisfy the rent due, sheep, cattle, horses, hogs, tools of trade, growing crops.

(8) Generally goods not belonging to the tenant, although on the tenant's premises, but this exemption does not apply so as to prevent the landlord seizing goods claimed by another, where that other claims by reason of a writ of execution or attachment against the goods, nor is the landlord prevented from seizing goods the tenant has sold to another, but which are yet on the premises or goods which the tenant has agreed to purchase but which are yet owned by another nor is the landlord prevented from seizing goods mortgaged nor goods which the tenant has exchanged with another to defeat the landlord, nor is the landlord prevented from seizing goods which are claimed by some relative of the tenant who is living with him as a member of his family.

Distress Under Mortgage.

Where a mortgagee seizes goods under a warrant of distress for interest due, the only goods he can seize are those not exempt from seizure under a writ of execution.

FIRE INSURANCE

Policy.

A FIRE insurance policy is a contract by which a Fire Insurance Company, called the insurer, or "the company," agrees to compensate the other party to the contract, called the insured, in case of loss of property by fire, if the person so insured complies with certain requirements and pays to the company a certain yearly amount called the premium.

Payment of Premium.

The premium must be paid to the company's agent in cash before the company will be liable. If the policy is issued while the premium is still unpaid the company will not be liable unless it acknowledges the receipt of the premium, or it was intended by the company that the pol-

icy should come into force when issued regardless of whether or not the premium is paid.

Interim Receipt.

This is a receipt given by the company's agent to the person insured upon payment of the premium in cash and until the policy is issued it is equally valid as a policy of insurance, the company being liable upon it for the full amount of the sum insured. The company continues liable upon such interim receipt until it either issues a policy or refuses to do so and notifies the holder of the interim receipt to that effect.

Loss.

The insured is not entitled to recover the amount of his policy unless the loss is the direct result of a fire. His goods need not be actually burned. If they are spoiled by water used in extinguishing a fire, or by smoke, or damaged, lost or stolen while being moved from a burning building, he may recover. But if a fire is only an indirect cause of loss he cannot recover.

If loss results from spontaneous combustion he may recover.

If the insured deliberately and intentionally sets fire to his property he not only cannot recover, but is liable to imprisonment for years, if his intent be to injure or defraud any person (see chapter on Fines for civil liability for damages or penalties of person setting fires).

Carelessness.

Insurance will be recoverable even though the fire occurs as a result of carelessness or neglect on the part of either the insured or his servant or employee.

Goods Substituted or Moved.

The policy covers goods substituted in the course of trade for goods insured.

Insurance cannot be recovered in case of loss to goods moved from the building in which they were when the policy issued unless the company is notified of and consents to the change.

Who May Insure.

To be able to obtain insurance on property the person insuring must either own the property, or have an insurable interest in it, i.e. such an interest that he may suffer from its destruction or damage. The following persons have insurable interests in property and may therefore insure it in their own names against loss; owners or joint owners of property; a vendor who has sold property under an agreement of sale, but who has not been paid in full; a purchaser of property under an agreement to purchase who has paid for it in part; a mortgagee of lands or goods, and the mortgagor.

People holding a limited interest only may insure for the whole value for which the property may be insured and recover the full amount if the property is destroyed. They do not require to disclose when applying for insurance that their interest is only a partial one.

They may insure their own interest only or their own and that of others interested with them.

Assignment of Policy.

There is generally a provision in the policy that it may be assigned to a purchaser or anyone acquiring an interest in the property insured, but such assignment may only be made with the consent of the company.

When the insured property is mortgaged the loss is usually made payable to the mortgagee. No act of the mortgagor, such as using the property in a more dangerous manner or re-insuring without the consent of the company can affect the mortgagee's right to the insurance in case of loss.

When the property is transferred the insurance policy should be sent immediately to the insurance company's head office in order to obtain its consent to the assignment of the policy.

Statements by Agents.

An insurance company is bound by the acts of its agent in so far as he keeps within the scope of his author-

ity. In case of fire, however, the safest course to pursue is to place the whole matter at once in the hands of a solicitor and not rely on statements by agents as to the manner of compliance with the statutory conditions mentioned below. The loss of a single day in fulfilling any of these conditions after a fire may relieve the company of all liability unless it has agreed otherwise in writing, or has induced, by words or conduct, the person insured to delay complying with the conditions.

Statutory Conditions.

Insurance policies at one time contained many oppressive conditions, some of which were almost impossible to perform, yet failure to perform any of them meant losing the insurance, and thus companies often escaped payment after fires.

To protect the public from such loss and injustice the conditions in fire policies are now fixed by law and are printed in separate paragraphs in each policy issued. If the company wishes to vary or add to such conditions, its variations must be printed in conspicuous type in red ink following the statutory conditions. These conditions should be read most carefully because there is no remedy where any of them are left unperformed.

Mutual Fire Insurance Companies

Mutual fire insurance companies are found in considerable numbers in the West. They lessen the cost of insurance because they are not organized for profit and the expenses of management are usually very light.

In British Columbia they can insure only isolated buildings and goods in rural districts. There is no such restriction in the other provinces, where almost any sort of property is insurable, but they can carry only small risks and as a matter of fact mutual companies are almost confined both in organization and in operation to the rural districts.

Incorporation is simple. Thirty (or more) persons may form themselves into a mutual company by filing with

the Registrar of Joint Stock Companies (in Manitoba with the Provincial Secretary) a document signed by each of them. Each agrees thereby to insure property of his own with the company for a specified amount and to give a "premium note" for a specified amount. Part of this note is payable when the insurance becomes effective. The balance is payable from time to time as the company's liabilities (running expenses, fire losses, etc.) require. The amount of the "premium note" always represents the limit of its maker's liability to the company. When he has paid the full amount of his note he cannot be held liable for anything more.

Those who apply for incorporation and take insurance are members of the company. After incorporation other members may join by taking insurance and giving "premium notes" in the same way.

A mutual company may also insure property for people other than the company's members. But insurers who are not members do not give premium notes. They must pay cash. No single risk of more than \$3,000 can be carried by a mutual company. In Manitoba the applicants for incorporation must agree to insure property to a total value of at least \$50,000. In Saskatchewan and Alberta a company must carry insurance totalling at least \$200,000 or forfeit its charter. In British Columbia the amount is \$300,000.

No property may be insured for more than three years. The minimum rate is 33 1-3 cents per \$100 of insurance except in British Columbia where it is \$1.00.

FIRES

Liability for Damages.

IF a person intentionally makes a fire even on his own land he does so at his peril, and is liable to any one suffering damage as a result of such fire escaping. If, however, a fire commences on his land accidentally and spreads to another's land without any carelessness or neglect on his part, he is not liable.

ALBERTA AND SASKATCHEWAN**Penalties for Kindling Fires.**

Any person who by himself or by his servant or agent kindles a fire and lets it run at large on any land not his own, or permits any fire to pass from his own land, or allows any fire under his charge or control, or that of his servants or agents, to run at large is liable to a penalty of from \$25 to \$200, in addition to damages to any person whose property is injured as a result.

Threshing Engines.

A person in charge of a threshing engine, or the owner or person employing him is not liable to penalties for a fire starting through the escaping of sparks from an engine, provided the following rules are observed:

(1) The engine must be so placed that there is a clear 30 feet between any part of the engine and the stack.

(2) A metal pan kept filled with water must be placed under the engine as a receptacle for cinders and ashes.

(3) The reservoirs in the smokestack must be kept filled with water before the fires are lit in the furnace and during the whole time the engine is in operation.

(4) All cinders and ashes must be thoroughly extinguished before the engine is removed.

(5) A barrel of water and two buckets must be available.

(6) A spark arrester in good repair must be used and not opened while the engine is in operation.

If these rules are not observed the person in charge of the threshing engine, or his employer, is liable for all damage caused by fire started by the engine and, in addition, to a fine of \$5.

Camp or Branding Fires.

Any person who kindles or is a party to kindling a fire in the open air for camping or branding purposes and who leaves the same unextinguished is liable to a penalty of \$100, in addition to being liable for all damage caused by such fire to any other person's property.

Clearing Land.

Where fires are started on land for the purpose of guarding property, burning stubble or bush, or clearing land, the land on which the fire is started must be entirely surrounded by a fire guard not less than 20 feet wide, consisting of land covered with snow or water or ploughed, burned over, worn, or graded so as to be free from inflammable matter and the fire while burning must be guarded by three adult persons with proper appliances for putting it out. If these rules are not carried out and the fire escapes, the person disobeying such rules is liable for all loss suffered through such fire and in addition to a fine of \$100.

Spring Burning.

Any land owner may before May 7th in any year clear an area up to 320 acres at a time if such area is surrounded by a fire guard at least 10 feet wide. Local improvement overseers may commence fires provided the fires are guarded by men and are surrounded by fire guards.

Fire Guardianas.

Any duly appointed fire guardian, Justice or member of the R. N. W. M. P. may at any time when a bush or prairie fire is raging order any male under 60 years of age, excepting postmasters, doctors and employees of railways, residing within ten miles of a prairie fire or within fifteen miles of a bush fire, to assist in extinguishing the fire. If any person ordered to assist fails to do so or to obey commands given to him by the fire guardian, he is liable to a penalty. Fire guardians are appointed by the municipality or the minister of agriculture.

MANITOBA**Investigations into Fires.**

In Manitoba an official is appointed called the Fire Commissioner whose duty it is to receive reports regarding fires from assistant fire commissioners appointed by him, and to hold an investigation after any building has been destroyed by fire. Witnesses may be summoned thereto. The investigation is similar to that held by a

coroner after a sudden death. The object of the fire commissioner's investigation is to ascertain whether or not the fire was the result of accident, design or carelessness.

Removal of Dangerous Conditions.

In Manitoba upon the complaint of any person whose property is endangered by conditions in any other building, or without such complaint, a fire commissioner or his assistants may investigate such conditions and for that purpose enter the buildings and premises in question, order the removal of any inflammable material or the remedying of dangerous conditions. A person refusing to obey such orders is liable to a penalty for each day's neglect, but if he considers the order unjust he may appeal to the fire commissioner within 48 hours of such order. The commissioner will himself investigate the matter and his decision is final.

The rules and regulations in force are similar in Alberta and Saskatchewan and in addition there are regulations respecting hay stacks, timber and methods of suppressing fires. Application should be made to the fire guardians appointed by the municipality for information as to such regulations.

In Alberta and Saskatchewan.

Any person who has reason to believe that any fire has been commenced by design or carelessness or under circumstances which should be investigated may make a sworn declaration before a Justice to that effect. Such Justice upon reporting the matter to the Attorney-General and receiving his consent may conduct an investigation into the cause of the fire, and may summon witnesses for that purpose, who if they do not appear are liable to a fine of \$10.

BRITISH COLUMBIA

No person may commence a fire in any fire district (such districts are created from time to time and information as to their boundaries may be had upon application to the Minister of Lands) between May 1st and October

1st, without first obtaining a permit from a fire warden, assistant fire warden, government agent, gold commissioner, timber inspector, forest ranger, mining recorder, provincial peace officer, police constable or other person duly authorized to issue such a permit. After a permit is obtained any person commencing a fire must carefully watch it and use every reasonable means to prevent it spreading. A sufficient space all around the fire must be cleared of all inflammable matter and the fire extinguished before leaving it. The fire must be started solely for the purpose of clearing land or for cooking or for obtaining warmth or for some industrial purpose.

All locomotive engines used on any railway in a fire district and all stationary engines therein must be provided with the most approved and efficient means used to prevent the escape of fire from such engines and the person using the engine must use such appliances and inspect them at least once a day to see that they are in order.

Every person operating a logging engine in a fire district between May 1st and October 1st must clear a reasonable space around the engine to keep fire from spreading and must have at all times a reasonable quantity of water near the engine for extinguishing any fire which may start up.

FRAUDULENT AND PREFERENTIAL ASSIGNMENTS

(See Preferential and Fraudulent Assignments).

GAME LAWS

Alberta.

Open Seasons.

No game may be hunted or killed on Sunday.

Big Game.

Bison or buffalo, no open season.

Mountain sheep and goats, from September 1st to October 15th, in any event not more than two sheep and two goats.

Elk and wapiti, no open season.

Prong horn antelope, no open season till October 1st, 1917.

Deer, caribou, moose, etc., November 1st to December 15th, and not more than one animal of any one species of this family.

Female deer, moose, mountain sheep and antelope or their young under one year, no open season.

Birds, etc.

Ducks, swans cranes, rails, coots, snipe, sandpiper, plover, curlew, September 1st to January 1st.

North of township 50 the white winged Sooter may be killed at any time. They may be bought or sold between September 20th and March 1st.

Grouse, partridge, pheasant, ptarmigan, prairie chicken, October 1st to December 1st, but no English pheasant shall be taken or killed at any time, nor more than 10 birds of this group be killed by one person in any one day nor more than 100 in any season, and no person shall sell or buy any of such birds.

Hungarian partridge, October 1st to December 1st, not more than five to be killed by one person in one day and not more than 25 in one season and no person shall buy or sell such birds.

Hungarian pheasants, no open season until October 1st, 1920.

Fur Bearing Animals.

Mink, fisher or marten, November 1st to April 1st.

Fox, none to be hunted or taken alive for export from the province.

Otter, November 1st to May 1st.

Muskrat, November 1st to May 1st.

Beaver, no open season till December 31st, 1920.

Beaver dams or muskrat houses are not to be destroyed or interfered with except under authority of the Lieutenant-Governor-in-Council.

No fur bearing animal may be poisoned.

But any person residing in or travelling through that part of the province north of the 55th parallel may take and kill all protected game birds and sufficient big game for the use of himself and family, except elk, buffalo and beaver.

Saskatchewan.**Open Seasons.****Big Game.**

Bison or buffalo—no open season.

Prong horn antelope—no open season.

Deer, including caribou, moose, elk, wapiti, etc.—south of line between townships 34 and 35—no open season; north of said line—Nov. 15th to Dec. 15th. No female elk nor the young under one year of any of the animals mentioned in this paragraph shall be hunted, taken or shot; any male moose or elk having horns or antlers less than six inches in length shall be deemed to be under one year of age.

No person shall kill in one season more than one elk or more than one cow moose nor more in all than two big game animals.

Birds, etc.

Ducks and geese—Sept. 15th to January 1st. Not more than fifty of such birds shall be killed by one person

on one day nor more than 250 in one season. No swans shall be taken at any time.

Cranes—Sept. 15th to January 1st—No whooping or white crane shall be taken at any time.

Rails and Coots—Sept. 15th to January 1st—Shore birds, including snipe, sandpiper, plover and curlew—Sept. 15th to January 1st.

Grouse, partridge, pheasant, ptarmigan, prairie chicken (all of the family Gallinae)—Sept. 15th to Nov. 1st. No sage grouse, ruffed grouse, commonly known as partridge, or Canada grouse commonly known as spruce grouse, shall be taken or killed before the fifteenth day of September, 1918, nor shall more than ten birds of the family Gallinae be killed by one person in any day nor more than one hundred in a season.

Fur Bearing Animals.

Mink, fisher and marten—Nov. 1st to April 1st.

Otter—Nov. 1st to May 1st.

Muskrat—Nov. 1st to May 1st. No muskrat shall be shot or speared. Muskrats which are destroying highways, etc., may be destroyed under the orders of a municipal council after permission has been given by the Minister of Agriculture.

Beaver—south of Churchill River no open season before Dec. 31st, 1920 without permission from the Minister, north of the Churchill River—Nov. 1st to May 1st. Where beaver become a nuisance by cutting trees, flooding meadows, causing the drowning of live stock, etc., the Minister of Agriculture may provide regulations under which such nuisance may be dealt with.

Fox—May 15th to February 15th.

Hunting Over Enclosed Lands.

No person may hunt over lands enclosed by a fence or under cultivation. A fine of not less than \$50 is imposed for disobedience of this rule.

Hunting at Night.

Big game or game birds mentioned above may not be hunted, shot at, trapped, wounded or killed between one hour after sunset to one hour before sunrise.

Methods of Killing Prohibited.

Game may not be destroyed or captured by poisoning or by the use of sunken punts, nightlights, traps, nets or snares of any kind or by swivel, spring, automatic or machine shot guns or any other contrivance for deadening the sound. In Sask. no one shall hunt ducks or geese from sailboats or motor steam boats.

Sale of Game.**Alberta.**

No person shall buy or sell or traffic in game heads or the flesh of any big game or game bird without in the case of flesh a license from the Minister of Agriculture, and in the case of game heads applying to the Minister to have the heads stamped.

Saskatchewan.

No person shall buy or sell the flesh of big game or game birds, but a keeper of a hotel, restaurant or boarding house may serve the cooked flesh of any big game or game birds secured in conformity with the law.

Exporting Game.**Alberta.**

None of the game mentioned above may be exported out of the province except in pursuance of a permit from the Minister of Agriculture. The applicant must furnish an affidavit that such game was lawfully killed or acquired by him. The fee is \$5 for each head of big game and \$1 per dozen for game birds. A permit may be issued to any person for the export of mounted or branded heads, the fee for which is \$1 per head.

Saskatchewan.

In order to ship out any big game or game birds or live fur bearing animal it is necessary to obtain a permit

from the Minister of Agriculture for each big game head shipped out and for each dozen or less game birds. No more than five dozen game birds may be shipped out in one season, and no permit shall be granted for the export of grouse or the entire carcass of a moose, elk, caribou or other deer. A non-resident licensee may take out with him any big game legally killed by him and not more than 100 game birds.

Furs etc.

Unprime furs may not be shipped out of the province. Eggs of game birds must not be destroyed.

Dogs.

No dog may be used in hunting big game and the owner of a dog accustomed to hunt big game must not allow such animal to run at large in any locality where big game are to be found. Any dog found running big game may be killed by any person.

Licenses.

In either province no person shall hunt big game without a license, except the persons referred to below living north of the 55th parallel. In Alberta no person without a license may hunt or take any game birds, except a farmer or member of his family residing with him on his farm and except persons residing north of the 55th parallel.

In Saskatchewan no resident of a city, town, village or hamlet shall hunt game birds without a license. Application for the license may be made to the Minister of Agriculture at Edmonton or Regina as the case may be. Licenses are in force for the year in which issued. In Saskatchewan licenses are issued both to residents and non-residents of the province. No license is issued to a person under sixteen years without a written application from his parent or guardian. A head of a family actually resident in that part of Alberta north of the 55th parallel may take and hold, for the use of himself and family, one head of big game, except elk, buffalo and beaver, in each year without taking out a resident's big game license.

Alberta.

No person except as provided above shall fire at, hunt, take or kill any bird whatsoever except wild geese, crows, eagles, goshawks, pigeon hawks, duck hawks, Cooper's hawks, hawkowls, blackbirds, grackles, English sparrows, loons, cormorants, pelicans and magpies.

The fees for residents' licenses is \$2.50 for each big game license and \$2.25 for each bird game license. But farmers and sons of farmers residing on their land are entitled to a big game license for \$1.00.

Non-residents' licenses are of three kinds, a general fee \$25; bird fee \$5; license to trap fur bearing animals, fee \$25. A holder of a general license may take with him out of the province the head, skin and hoofs of any big game killed by him.

A license will be revoked and no further one issued to the holder for ten years where the holder shoots at or wounds any other person, whether such shooting or wounding be by accident or otherwise, and, even though the guilty person be not liable to punishment under the Canadian Criminal Code, he is liable, under the provincial law, to a fine of not less than \$500 nor more than \$1,000. Every holder of a big game license is required to wear while hunting a complete outer suit of white, including a white toque or cap.

Game Preserves.

Certain parts of the provinces are set aside as game preserves and no game shall be shot or hunted therein and any person (except in Sask. a bona fide traveller or settler passing along a road or trail) found on such preserves with firearms will be liable to a penalty.

Fur Dealers and Taxidermists.

Fur dealers and taxidermists are required to have licenses.

Guides' License.

Guides or camp helpers may not act as such without first obtaining a license so to act from the Minister of Agriculture.

Special Permission.

North of 55th parallel of latitude any person residing in or travelling through such country may at any time take or kill any game birds above mentioned or any big game excepting elk, buffalo and beaver sufficient for the use of himself and family. (See also above under Licenses).

Game Guardians.

The Minister of Agriculture appoints game guardians. Members of the R.N.W.M.P. are ex-officio game guardians, so are (in Sask.) the members of game protective associations, issuers of game licenses and provincial, city, town or village constables.

Seizure of Game.

Game guardians may seize any game or furs, &c., of any person who has disobeyed the above rules and take same before a justice who, upon notifying such person and hearing the matter, may order the game, furs, &c., confiscated to the game guardian. In Saskatchewan a game guardian may without warrant arrest any person not known to him found committing any offence against the game laws.

Wolf Bounties.**Alberta.**

The following bounties are payable for wolves killed: Timber wolves, \$10 per head; prairie wolves, \$1 per head; wolf pups, \$1 per head.

Manitoba.**Open Seasons.**

Open seasons for game are as follows:

(None of the game mentioned may be killed or shot at on Sunday and, between sunset and sunrise, none except fur bearing animals.)

Big Game.

Deer, cabri, antelope, elk, wapiti, moose, reindeer, caribou—Nov. 21st to Dec. 10th. No female of these animals may be hunted, killed or wounded and none of either sex

when under the age of one year. And no person shall in any one season kill or take more than one male.

Fur Bearing Animals.

Beaver and otter, south of 53rd parallel of latitude—no open season; north of 53rd parallel of latitude—Nov. 15th to May 1st. In any part of the Province beavers may be taken or killed where their dams are causing damage.

Fox or lynx—Nov. 15th to April 1st.

Mink, fisher, pekan, sable and marten—16th May.

South of 53rd parallel—Nov. 1st to April 1st. North of 53rd parallel—Nov. 15th to May 1st.

Muskrat—South of 53rd parallel—Nov. 1st to May 1st—north of 53rd, Oct. 20th to June 1st. No beaver or muskrat houses shall be destroyed at any time except where the beaver dam is causing damage. Shooting or spearing of muskrats is prohibited.

Game Birds.

Grouse, ptarmigan, prairie chicken, partridge—Oct. 1st to Oct. 20th. Not more than 50 to be taken in any season and no more than 15 in one day.

Pheasant, swan, pelican, cormorant, quail, curlew, whooping crane, woodduck, Hungarian partridge — no open season till Oct. 1st, 1920.

Plover, woodcock, snipe, sandpiper — Sept. 15th to Dec. 1st.

Ducks—Sept. 15th to Dec. 1st. Before Oct. 1st no more than 20 ducks per day may be taken by one person and after Oct. 1st no more than 40 ducks per day, and no one shall take or kill more than ten geese on any one day.

Permits.

(a) Big Game.

Persons wishing to hunt big game must obtain, before the first day of the open seasons mentioned, a permit which is obtained from the Minister of Agriculture upon application and payment of the fee of four dollars. The permit must be returned at the end of the open season to the Minister, together with an affidavit of the animals

killed. The permit must be carried at all times and exhibited when required. Heads of all animals killed must be taken away with the carcass.

(b) Fur Bearing Animals.

No person may trap, kill or capture such animals without obtaining a permit from the Minister of Agriculture. Residents of Canada and non-residents may obtain such permits. Farmers may trap, &c. such animals on land owned by them without obtaining such permits. These permits must be returned to the Department of Agriculture by June 1st of each year.

(c) Game Birds.

Residents of cities, towns and incorporated villages in Manitoba must obtain permit to hunt, &c., game birds mentioned above. Such licenses are issued for one year. Wild ducks may not be sold or taken into cold storage by any one before Oct. 1st.

Cold Storage Plants.

Cold storage plants for keeping game or game birds must obtain a license.

Dogs.

Dogs may be trained as setters and pointers when accompanied by their owner. Dog trainers must obtain a license on April 1st of each year. Rules as to dogs running at large and illegal methods of taking animals are the same as mentioned above under Saskatchewan and Alberta.

Eggs.

No eggs of game birds above mentioned may be taken or destroyed.

Permits to Export.

Prairie chicken, partridge, grouse, geese, swans, wild ducks, moose, deer, elk and cariboo may not be exported, except by a non-resident who may obtain a permit for the export of 100 geese or swans and 50 ducks or for the carcass of a moose, deer, elk or cariboo killed by him.

Buying and Selling.

Big game and game birds above mentioned may not be bought or sold except the heads of such animals. Fur-bearing animals killed during the close season may not be bought or sold.

Trespassing.

Animals above mentioned may not be hunted, trapped or killed on the land of any person where such owner prohibits the same by verbal request or posted notice.

Non-Residents.

All non-residents must obtain a permit before hunting any of the animals or birds mentioned above. The fees for British subjects are lighter than those for foreigners.

Dress of Hunters.

Persons hunting big game must wear a coat or sweater and cap of some white matériel.

Game Preserves.

Certain sections of Manitoba are set aside as game preserves where game may not be hunted. For information as to such sections apply to any game guardian.

Penalties.

Persons disobeying the rules of law laid down in the game act as above described are liable to a fine and to have all animals or furs in their possession confiscated.

British Columbia.**Open Seasons.**

The open seasons in this province are declared by regulations made by the Lieutenant-Governor-in-Council. These regulations may be obtained by writing to the Minister of Agriculture at Victoria, B.C.

Discharging Firearms.

No person shall at any time discharge a firearm of any description within Victoria and Vancouver harbours.

Taking of Birds' Nests and Eggs.

No person shall take, injure, destroy or have in his possession any nest or eggs of any birds whatsoever, save

and except hawks, falcons, eagles, owls, crows, magpies, blue-jays, Western and American robins, English sparrows and pigeons.

Non-Resident Indians.

No non-resident Indian shall hunt or kill game in the province at any time.

Killing Deer for Hides Only.

No person shall at any time kill deer for their hides alone.

Animals Not to be Killed or Taken.

No person shall at any time hunt, trap, take, wound or kill, or have in his possession any or any part of any bison or buffalo, any wapiti (commonly called elk), moose, caribou, or mountain sheep of the female sex; any wapiti, moose, caribou, mountain sheep, mountain goat or deer under one year of age or any bird whatsoever save and except game birds and hawks, falcons, eagles, owls, crows, magpies, blue-jays, Western and American robins, English sparrows, and pigeons.

Except during the open seasons no person shall at any time hunt, trap, take, wound or kill any big game, fur-bearing animals, game birds.

Privileges of Farmers, Inspectors, Surveyors, Engineers.

A farmer may kill deer for food provided he is the holder of any license to carry firearms, if residing in an unorganized district; and if residing elsewhere than in an unorganized district, may for the like use, at any time after having obtained a permit therefor, hunt and kill and retain in his possession any such deer.

Any inspector who is the holder of any license to carry firearms may at any time in any unorganized district hunt, kill and possess any game for his own use when in actual need of the same for food and may for the like use during any open season hunt, kill and possess game elsewhere than in an unorganized district and may for the like use, at any time after having obtained a permit therefor, hunt, kill and possess elsewhere than in any unorganized district any deer of the male sex over one year in age.

A member of a surveying or engineering party who is the holder of any license to carry firearms may at any time in any unorganized district, while actually engaged in field work, hunt, kill and possess elsewhere than in any unorganized district any deer of the male sex over one year in age.

Any member of a surveying or engineering party who is the holder of any license to carry firearms may at any time in any unorganized district, while actually engaged in field work hunt, kill and possess any game for his or their own use when in actual need of the same for food. The head of any such surveying or engineering party shall forthwith on his return from field work, file with the Provincial Game Warden a statutory declaration setting out the days the party was in the field, the names of the persons comprising the party, and the number of each species of animal or bird killed by the members of the party.

Number of Animals Which May be Killed.

No person shall kill in any one year or season more than two moose, only one of which shall be killed in the County of Kootenay, one wapiti, three mountain goats, three caribou, three deer of any species, or more than four in all; two mountain sheep of any one species, or more than three in all, only one of which shall be killed in the County of Kootenay, two hundred and fifty ducks.

Selling Game.

Any person other than a merchant or store keeper who sells during any one year or season any of such game in excess of the number mentioned in the paragraph above shall be guilty of an offence.

Hunting at Night.

No person shall hunt or kill any game birds or any member of the deer family between one hour after sunset and one hour before sunrise. Any person found between said hours with head-lights of any description and firearms in his possession shall be guilty of an offence and liable to immediate arrest without warrant by any Game Warden or constable.

Entering Upon Cultivated Land.

No person shall enter, with any firearm or trap in his possession, or permit his dog to enter into any growing or standing grain or upon any cleared land or land under cultivation, not his own, without the permission of the owner; and no person shall at any time hunt, shoot, or trap or with any firearm or trap in his possession go upon enclosed land of another without permission of the owner, lessee, or occupant thereof. "Enclosed land" means any land enclosed by a fence, water or other natural boundary, or partly by fence and partly by water or other natural boundary, and in use for agricultural, pastoral, or horticultural purposes or for breeding any animal. The word "fence" does not necessarily mean a lawful fence but includes any fence.

Use of Dogs.

No person shall use or allow any dog to hunt or run deer or, being the owner of a dog accustomed to pursue any big game, allow such dog to run at large in any locality where deer are usually found.

No person shall, between April 15 and August 1, both inclusive, use or allow any dog to hunt or run after any game bird.

Any person harbouring or claiming to be the owner of any such dog shall be deemed to be the owner thereof.

The owner if found and convicted may regain possession of any dog so taken upon payment to the Game Warden or constable by whom the dog was taken of the sum of \$2 for each week during which such dog is in his possession.

Use of Traps.

No person shall use or set for the taking or killing of game birds any trap, snare, or net, or any drugged or poisoned bait or bait or baited lines nor use or set for the taking or killing of game birds any of the contrivances known as batteries, swivel guns, or sunken punts, hunt or kill any game birds from any sailboat or from any yacht or boat

propelled by steam, gasolene, electrical or other similar motive power in tidal waters.

Any person finding any trap, net, bait, baited lines, or contrivances so set or in use may destroy the same without incurring any liability therefor.

Use of Repeating Shotguns.

It shall be unlawful for any person to use or have in his possession a pump or repeating shotgun of any kind with a magazine capable of holding more than one cartridge, or any automatic shotgun of any kind. Any such automatic, pump, or repeating shotgun unlawfully found in the possession of any person may be seized by any Game Warden or constable, and the same may be disposed of.

Interfering With Lawful Traps.

No person shall in any way touch or interfere with any trap lawfully set by a licensed trapper on any lands, other than cleared or cultivated lands and enclosed land.

When any cabin has been built or line of traps laid out or set or other provision made for trapping by any licensed trapper, no other person shall set any trap within one-half mile of where such traps are set or preparations made to set traps, provided that such trapper shall have commenced actual trapping in pursuance of such preparations not later than the fourteenth day of November in any year.

Permitting Traps to Remain.

No person shall leave or allow traps set by him to remain set after the end of the open season for fur-bearing animals.

Breeding of Fur-Bearing Animals.

No person shall engage in or carry on the business of breeding any fur-bearing animals or any big game birds without first obtaining a permit therefor.

Possession of Deer Skins.

No person being a skin or fur dealer shall have in his possession the skin or hide of any wapiti or deer.

Exporting Animals and Birds.

No person, or railway, steamship, or express company, or other common carrier except as herein provided shall at any time export or cause to be exported or carried or have in possession for the purpose of exporting or carrying out of the province any or any portion of any animal or bird protected under the provisions of the Game Act except in pursuance and by virtue of a permit first obtained.

Importing Animals or Birds.

No person shall at any time import or bring into the province any live animal or bird without first obtaining a permit therefor. Any animal or bird imported or brought into the province in violation of the Game Act may be seized by any Game Warden or constable, and the same may be disposed of as provided by the Act.

Licenses.

No person who is a resident shall at any time hunt, trap, take, wound or kill any game or carry any firearms of any description or any trap or other device which can be used for trapping or killing any game without first taking out a license in that behalf.

No person who is not a resident shall at any time hunt, trap, take, wound or kill any game or angle (as the term is generally understood) for fish in any waters of the province, or carry, except while travelling in a public conveyance either by land or water or while bona fide proceeding directly to or from any such public conveyance, any firearm of any description or any fishing rod, trap, or other device, which can be used for trapping, killing, or taking any animal, bird, or fish, without first taking out a license in that behalf. Provided that the provisions of the Game Act as to carrying firearms shall not apply to militiamen or to any person while bona fide engaged in target shooting or shooting at clay pigeons or other similar gun competitions, or in going to or from the same.

Licenses shall be valid only for the purposes therein specified from date of issue until March 31, next following,

or any date of expiration expressly named therein. They shall be in such forms as are approved by the Provincial Game Warden, and may be issued by him or by such persons as he may authorize, as follows: To a resident, and to any officer or man of His Majesty's Army, or Navy or of the Canadian Militia on duty in the province to carry firearms and to hunt game birds and deer, but not entitling him to hunt or trap any other game, and the fee for such license and accompanying badge shall be two dollars and fifty cents; provided that such license may be issued to a farmer or to any member of his family, in respect only of hunting on the land on which they permanently reside or the land contiguous thereto; To a resident and to any officer or man of His Majesty's Army or Navy or of the Canadian Militia while on duty in the province, to carry firearms and to hunt big game and game birds, but not to trap, and the fee for such license and accompanying badge shall be five dollars; To a resident to carry firearms and traps and to hunt big game and game birds and to trap fur-bearing animals, and the fee for such license and accompanying badge shall be ten dollars; To a prospector who is a resident, to carry firearms but entitling him to hunt game only in accordance with the provisions of the Game Act to be issued only upon production of his free miner's certificate without the payment of any fee; To a person not a resident, to carry firearms and fishing rods and to hunt big game and game birds and to angle for fish, and the fee for such license shall be one hundred dollars; To a person not a resident to carry firearms and to hunt game birds, and the fee for such license shall be \$50; To a person not a resident to carry firearms and to hunt bear between January 1 and July 1, but not entitling him to hunt or trap any other game, and the fee for such license shall be twenty-five dollars; To a person not a resident to angle for fish between January 1 and December 31, and the fee for such license shall be five dollars; To a person not a resident who is a British subject, to carry firearms and to hunt game birds, and the fee for such license shall be five dollars per week.

Firearms in Motors.

No person, whether holding a firearms license under this Act or otherwise shall carry or have in his possession while in a motor any firearm or have, drive, operate, or use upon or along any highway a motor which contains any firearm in any part of the province except during the open season for game birds declared in respect of such part of the province or except on a permit of the Provincial Game Warden.

Licenses shall not be transferable, and any person who uses or wears any other person's license or badge, or knowingly allows his license or badge to be used or worn by any other person, shall be guilty of an offence.

No license shall be issued to any boy under 16 years of age, except at the written request of his parent or guardian, who shall also undertake that such boy shall always when carrying firearms, be under the supervision of some adult holder of a license. Any such boy who carries firearms without being accompanied by and under the supervision of an adult holder of a license shall be guilty of an offence. Every license issued in pursuance of this section to a boy under 16 shall have a statement of that fact endorsed thereon.

Any person having taken out one form of license in any year may not take out any other form without first surrendering both license and any accompanying badge, or furnishing satisfactory evidence of loss of same, and paying the full amount of fees for such other license. A refund of fees on the license so surrendered may afterwards be made with the approval of the Provincial Game Warden.

Returns.

Each resident to whom a license shall have been issued in any year under the Game Act shall, within two months after the date of expiration of such license, return the same to the Provincial Game Warden, with a statement showing the number of each species of big game and of fur-bearing animals killed or trapped by him during the

period mentioned in such license. Every such resident who, after the expiration of his license, takes out any license under the Game Act without having first made the return required shall be guilty of an offence.

Any person convicted of any violation of the Game Act or any regulation made thereunder shall be liable to have any license held by him cancelled and may be refused a new license thereafter at the discretion of the Provincial Game Warden, subject to appeal to the Lieutenant-Governor-in-Council.

Guides.

No person shall act as guide unless he is a resident and has taken out a license in that behalf nor without satisfying himself that he has the proper firearms for the kind of game intended to be hunted. No person shall go out with any person who has undertaken to act as guide without first satisfying himself that such person has a guide's license. No person shall, being the holder of a guide's license, neglect or fail to return his license to the Provincial Game Warden within fourteen days of the date of its expiration, with a statement showing the names of all the persons for whom he has acted as guide during the period of such license, and the number of species and sex of animals killed by them.

A guide's license shall entitle the holder to carry, but not to use, firearms belonging to any person for whom he is guide, and shall be in form approved by the Provincial Game Warden, and be signed and granted by him or by such persons as he may authorize. It shall only be valid from the date of issue until the 31st of March next following, and the fee shall be \$5.

Possession and Sale of Game.

No person shall have in his possession any game whether alive or dead or any part thereof during the close season, provided this section shall not apply to trophies of game legally killed or to dressed furs; nor shall it apply to undressed pelts of fur-bearing animals in prime condition had in possession north of the fifty-second degree of

latitude during the three months, and south of the fifty-second degree of latitude during the two months, immediately following the end of any open season, or during such further times as the Provincial Game Warden may by permit in his discretion allow such possession, or to game lawfully killed or obtained for personal use and had in possession during the fourteen days immediately following the end of any open season.

Except as provided by regulations made by the Lieutenant-Governor-in-Council under the Game Act no person shall buy or sell, or offer or attempt to buy or sell, or expose for sale, or have upon the premises of any shop, storehouse, warehouse, restaurant, hotel, or eating house, or upon any delivery cart or wagon in use for or belonging thereto, or upon any dining car belonging to any railway company, any or any part of any big game or game birds.

No person shall sell, or offer or attempt to sell, or expose for sale, any big game without its head on, or any game birds without their plumage.

No person shall at any time keep game in cold-storage. The sale of heads is prohibited.

Penalties.

Any person guilty of an offence under the Game Act or who violates or commits any breach of the Act or of the regulations made thereunder, is liable on summary conviction to the following penalties:

(a) For shooting, killing or taking any big game, except deer and mountain goats, during the close season, in violation of any provisions of the Game Act, of not less than two hundred and fifty dollars or more than five hundred dollars for each animal.

(b) For shooting, killing, or taking any deer or mountain goat or any game birds or fur-bearing animals in violation of any provisions of the Act of not less than twenty-five dollars or more than one hundred dollars for each animal or bird.

(c) For an offence against sec. 23 of not less than fifty dollars or more than three hundred dollars, or to a

term of imprisonment not exceeding thirty days, or to both fine and imprisonment.

(d) For using another person's license or badge, or allowing the same to be used, in violation of any provision of this Act of not less than fifty dollars or more than two hundred dollars.

(e) For any other offence against or violation of any provision of the Act or any regulations made thereunder, of not less than five dollars or more than three hundred dollars, or to a term of imprisonment not exceeding three months, or to both fine and imprisonment.

Any penalty imposed pursuant to the Act shall be paid forthwith, and in default of payment, the offender shall be liable to imprisonment, with or without hard labour, for a period not exceeding six months.

Any person giving information leading to the conviction of any person for any violation of the Act, or any regulations made thereunder, shall, subject to the approval of the Minister, be entitled to receive one-half of any pecuniary penalty inflicted pursuant thereto.

GRAIN LAWS

THE laws respecting western grain are contained in an Act of the Dominion Parliament called the Canada Grain Act, 1912. Copies of this Act with amendments may be obtained on application to the King's Printer at Ottawa. Every grain grower as well as all who are in any way engaged in dealing in grain should provide themselves with a copy of this Act.

Grain Commission.

A Board of Grain Commissioners consisting of three commissioners and a secretary has charge of all matters dealt with by the Act. They reside in the city of Fort William, Ontario, and the main sessions of the Board are held there. These commissioners hold office for ten years on good behaviour.

Inspection Division.

For the purposes of inspection of grain the country is divided into two Inspection Divisions, viz. the Eastern Inspection Division, comprising all of Ontario east of Port Arthur, Quebec and the Maritime Provinces. The Western Division includes all of Ontario west of Port Arthur, Manitoba, Saskatchewan, Alberta and British Columbia. Each division has a chief inspector in charge of the division and under him are deputy inspectors, clerks, etc.

Duties of Inspectors.

The inspector and deputy inspector must select, not later than October 1st of each year, samples of the different grades of grain which are called official standards. These samples may be furnished upon request. It is also their duty to inspect grain without delay upon request of the owner of the grain. If the owner is not satisfied with the grading he may appeal to the chief inspector. If he is dissatisfied with the chief inspector's grading he may, within 24 hours after receiving notification of it, appeal to the Grain Survey Board for the district. Offices of such Boards are in the cities of Winnipeg and Calgary.

Standard Weights.

Standard weights for a bushel of each kind of grain are as follows: Barley 48 lbs., Buckwheat 48 lbs., Flax seed 56 lbs., Indian Corn 56 lbs., Oats 34 lbs., Peas 60 lbs., Rye 56 lbs., Wheat 60 lbs.

Weighmasters.

These are appointed by the Board of Grain Commissioners for each division. In practice they are located only at terminal elevators. It is their duty to take charge of the weighing of inspected grain. Upon demand by any person whose grain is being weighed they are required to give to such person a certificate of the grain weighed.

Inspection.

All grain is inspected at either Winnipeg or, if through pressure of business, the chief inspector permits, then at Fort William.

Grades of Grain.

A printed copy of the standard grades is posted upon all country elevators (see section Country Elevators below).

Commercial Grades.

If in any year on account of the lateness of the season or climatic conditions a great quantity of grain does not grade within any of the standard grades other grades called commercial grades may be established. The Board of Grain Commissioners may appoint for any division or district as a Grain Standards Board such number of fit and skilful persons as it deems necessary for the purposes of establishing commercial grades and of choosing samples of such grades to be the standards therefor.

Complaints to Board.

Any person complaining of undue dockage, improper weights or grading, refusal or neglect to furnish cars within a reasonable time, or of fraud or oppression by any firm or corporation owning or operating any warehouse, elevator, mill or railroad or by any grain commission merchant, or track buyer or of any violation of the Grain Act, should set out such complaints in writing under oath in the form of an affidavit and forward them to Board of Grain Commissioners at Fort William or Port Arthur, Ont. The Board then proceeds to hear and dispose of the matter and give a decision thereon.

Country Elevators.

These are elevators which receive grain for shipment before being inspected and are situated along the main line or spurs of railways. Any person desiring to erect such an elevator must apply to the railway company for a site and if there is any dispute the matter of the site can be referred to the Grain Board. The owner of a country elevator must also obtain from the grain board a license expiring on August 31st of each year. Each year the Board of Grain Commissioners may before the 1st of September make and promulgate all suitable and necessary rules and regulations for the government and control of country ele-

vators and for the receipt, storage, insurance, handling and shipping of grain therein and therefrom. A printed copy of such rules and regulations and the provisions of law as to classification of the various grades of grain shall at all times be posted in each country elevator.

Duties of Operator of Country Elevator.

These duties are as follows:

(a) The receiving of grain which can be graded according to the established grades mentioned above without discrimination as to persons during reasonable and proper business hours and the insuring of such grain against loss by fire. If the owner of the grain so requests the operator of the elevator, if he has the machinery, cleans the grain before weighing it.

(b) The keeping of books of account of the grain received and the issuing of check or storage receipts as described below.

Warehouse Receipts.

When grain is delivered to the elevator for storage or shipment a warehouse receipt must be delivered to the owner of the grain showing the gross and net weight of the grain, dockage for dirt, the grade and also mentioning that the grain has been received into store and that upon return of the receipt and payment of all charges for storing and handling the grain the grain will be delivered to the person storing the grain or his order. Upon the return of such receipt and payment of charges for storing grain the elevator operator is required to make demand for cars and ship the grain within 24 hours after the cars have been so supplied and demand made by the owner of the grain requiring such shipment. Storage receipts stating that the grain is deliverable to order are good in the hands of any person to whom they are properly endorsed notwithstanding any prior claims against the grain for which they are issued.

Cash Purchase Tickets.

If the elevator company or owner of the elevator fails to redeem in cash any cash purchase ticket issued by them

within 24 hours of demand made by the holder of the ticket, such demand being made within 24 hours after its issue, the holder may require such cash purchase ticket to be exchanged for a storage receipt.

Shipping Certificate.

When the owner of grain wishes to ship it he should deliver his special bin or storage certificate to the elevator operator with a request that his grain be shipped. The operator then loads the grain in cars and makes out a bill of lading which may be signed by the farmer or by the elevator operator acting as his agent.

Shipping Grain.

The owner of grain stored in general or special bins may order cars to be placed at the elevator for the shipment of grain and may have the cars loaded after delivering up the storage receipts to the operator of the elevator. The grain must be shipped by the elevator company within 24 hours after demand made and cars have been furnished; in default of so shipping the grain the elevator company will be liable in damages unless it is in no way to blame.

Special Bins.

An agreement may be made by the owner of grain to have it stored in special bins in the elevator. A sample is retained out of each wagon load delivered into the special bin and carefully preserved. If the grading at terminals does not satisfy the owner of the grain that the identity of his own grain has been preserved he must notify the warehouseman of the fact in writing and thereupon the samples must be forwarded to the chief inspector for comparison and his decision is final. If grain in a special bin is getting out of condition and the elevator operator is unable to cure such condition he must notify the grain commission and the owner of the grain in writing. The grain may then be redelivered to the owner upon return of the storage receipts. If the owner does not take back the grain within ten days after such notice it may be sold by the elevator company by public auction. The operator

of the elevator must at all times do all in his power to keep the grain in condition.

Disagreement as to Grade or Dockage.

When a farmer delivers his grain to the elevator a sample is taken from each load and placed in a box kept for that purpose which can be locked at the request of the farmer. In the event of a dispute between the elevator operator and owner of the grain as to grain or dockage for dirt, a sample is taken from this box by the elevator operator and the grain owner jointly and forwarded in a sack to the Chief Inspector whose judgment is final.

Loading Platforms.

If loading platforms are desired for the purpose of loading grain directly from vehicles into cars, ten or more farmers, residing within twenty miles of the nearest shipping point, may apply for them between April 15th and October 15th in any year to the Grain Commission at Fort William. The application must be made on a form obtained from the Commission. The Board will then order the railway company to erect such loading platforms. All persons may use such loading platforms free of charge. Upon application to the railway company cars must be furnished for loading purposes.

Ordering Cars.

Cars must be ordered in the car order book at each station where there is an agent and grain is shipped. Cars of special dimensions may be ordered. After notification by the agent that a car has been allotted to him, he must, within 4 hours thereafter, declare his ability to load the car and load it within 24 hours or the order for the car will be cancelled. Cars are allotted in the order in which the orders appear in the car book. Notice of allotment of cars is posted up in the station by the agent. The railway company must spot or place the car at the siding or loading platform where the applicant for the car so orders in the order book. The railway agent must, before the car is loaded, be notified of the proposed destination of the car.

The Act provides the following penalties for infringement of its provisions regarding car order books: Every one who transfers or sells his right to any car allotted to him for shipping grain, or to be allotted to him for shipping grain, or purchases, takes over or accepts any assignment or transfer of the right of any applicant entitled to a car for shipping grain; or, loads any such car which has not been allotted to him by the station agent, or out of his turn loads such car; or, not being the agent, duly authorized in writing, of an applicant for a car for shipping grain, obtains the placing of a name on the car order book as the name of an applicant for a car for shipping grain; is guilty of an offence and liable on summary conviction, to a penalty not exceeding \$150 and not less than \$25.

One-half of any penalty imposed with full costs, shall be paid to the person who informed and prosecuted for the same.

It will be seen that these penalties apply not only to the elevator agent but also to the farmer shipping grain and to the station agent if they violate the provisions.

GUARANTEE AND EMPLOYERS' LIABILITY INSURANCE

(See Life and Accident Insurance).

HAIL INSURANCE

IN order to render the costs of hail insurance as small as possible and in order that all persons raising crops may enjoy the protection of hail insurance a scheme of municipal hail insurance has been provided by recent statutes of the Prairie Provinces whereby a rate is collected as taxes from every land owner in the municipality and the proceeds are paid out as indemnity insurance to all suffering loss through damage by hail. It is entirely optional with rural municipalities as to whether they will adopt the scheme or not. The manner of adoption and working is as follows:

How Scheme Adopted.

All that is required to be done is for a committee of any rural municipality to submit a by-law in the form designated by the Acts and before its final reading and coming into full effect such by-law must be voted upon by the ratepayers of the municipality. In Manitoba those entitled to vote on such by-law are those stated upon the last revised assessment roll as holding 20 acres of land of not less than \$300 value. In Saskatchewan those entitled to vote are owners and occupiers of land entered as such on the last revised assessment roll or if not so entered those entitled to vote in municipal matters as owners or occupiers of lands within the municipality. The by-law carries if there is a majority of votes cast for it. In Manitoba two thirds of the electors must vote on the by-law. If the electors assent to the by-law it must be dully passed by the council not less than ten weeks (in Saskatchewan) following the voting and in Manitoba within six weeks after the voting.

The by-law comes into force in Saskatchewan when the Minister publishes his approval in the Saskatchewan Gazette.

The Minister of Municipalities has charge of the carrying out of the Act in Saskatchewan and Alberta. His sanction is necessary before the by-law comes into force.

In Saskatchewan and Manitoba the scheme may be carried on by any one or more municipalities. In Alberta the scheme will not be put into effect unless approved by at least 20 rural municipalities, which 20 municipalities are called a hail insurance district. But the council of any municipality not in a hail insurance district may submit for approval of the electors a by-law empowering the municipality to unite with the hail insurance district. In Saskatchewan the scheme must be carried on by several municipalities acting together but there is no fixed minimum number as in Alberta.

Commissioners.

In Saskatchewan and Alberta there is constituted a board of 3 persons, called in Alberta "The Hail Insurance Board of Alberta" and in Saskatchewan "The Hail Insurance Company" one of whose members is appointed by the Minister and the other two elected in connection with the reeves of the municipalities acting conjointly in connection with the scheme. This board or commission has charge of the scheme under the direction of the Minister and is answerable for its actions and disposal of moneys to both the Minister and the municipalities in much the same way as a board of directors of a company is accountable to the shareholders. The board or commission has power to appoint inspectors to investigate claims for indemnity, to borrow money, mortgage assets, enter into contracts and receive and disburse claims for indemnity, receive and distribute moneys collected for such indemnity, make regulations in connection with the scheme and generally to do such actions as are necessary to the carrying out of the scheme. For their services they receive a remuneration fixed by the Act.

Hail Insurance Taxes.

(a) After the municipality has voted on the hail insurance by-law and it has come into force a rate is struck each year and is assessed on all lands within the municipality withdrawn. In Manitoba the rate must not exceed 3c. per acre and in Saskatchewan 4c. In Alberta the rate

is limited to 10c. The rate so limited is collectable as ordinary taxes are collected. A penalty is added to the tax in Alberta and Saskatchewan if not paid after October 31st of any year. The rate so stated is intended to cover all the expenses and payment of claims for costs from hail for the year following.

Withdrawers. Alberta and Saskatchewan.

Certain lands may be withdrawn from the operation of the scheme and cannot be liable for the hail insurance tax if the owner notifies the Secretary-Treasurer of the municipality in which the lands are situated before June 1st, describing the lands and satisfying the council that such lands are—

In Alberta.

An unpatented quarter section held as a homestead, pre-emption or purchased homestead entry and having less than 25 acres under cultivation.

In Saskatchewan.

An unpatented half section held under homestead, purchased homestead or pre-emption entry having less than 25 acres under cultivation:

Hay and grazing lands only completely enclosed by substantial fence in good repair of two strands of wire or posts not more than 33 feet apart or with less than 25 acres under cultivation, the rest being hay and grazing lands only and enclosed by such fence.

Claimants for Damage.

(a) Notice.

Alberta and Saskatchewan.

Where damage is done to crops by hail between June 16th and September 15th, both inclusive, of any year and (in Alberta) in the case of fall wheat and rye, between June 1st and September 15th, both inclusive, the person suffering such damage where lands are insured and with hail insurance taxes, must within 3 days in Alberta and 5 days in Saskatchewan notify the secretary of the Board or Commission by registered letter addressed to "The Secretary of

the Hail Insurance Board of Alberta, Edmonton", or to "The Secretary of the Hail Insurance Commission, Regina," as the case may be. The form of the notice is provided by the Board. The notice should show the location of the crop, the kind of crop, number of acres damaged, percentage of damage done, nature and amount of claimant's interest in the crop and of any other person's interest in the crop and the amount of their interest. The notice must also show the section, township and range where the claimant resides and his post office address, and where the claimant does not reside within two miles of the crop damaged, the notice must contain the name, section, township and range of some person residing within two miles of the crop. In Alberta the statement is verified by statutory declaration and in Saskatchewan it is witnessed and verified by a neighbor. Application should be made to the Secretary of the Commission at Regina or Edmonton as the case may be for forms of claims for damage so that when damage occurs no loss of time may be occasioned in sending in claims. Before the losses are paid the crop damaged must be examined and reported upon by the inspector appointed by the Commission or Board. In Saskatchewan the inspector in reporting the amount of the indemnity payable for the loss must endeavour if possible to secure the consent of the claimant for the amount of such indemnity. In Alberta the inspector delivers a report. The claimant who is dissatisfied therewith must within five days thereafter send by registered letter a notice to the secretary of the Commission at Edmonton that he is not satisfied with the inspector's report. The secretary then enquires into and settles the amount of the claim.

Manitoba.

Any person in any municipality which imposes hail insurance taxes whose crop is injured by hail must within three days after the damage notify in writing the clerk of the municipality of such loss, enclosing with such notice a statutory declaration by himself and a neighbour setting out the claimant's name, description of the land on which the crop is growing, time when the loss occurred and the

extent of the loss. The notice must either be handed personally to the clerk or a person appointed by the municipality or left at his residence. The loss is then examined by the appraiser who adjusts same. No claim can be made unless at least one third of crop is lost. If less than one third of crop is damaged the claimant must pay costs of investigation. At the next meeting of the council after the loss, the council if satisfied with the inspector's report pass a resolution requesting the Minister of Municipalities to pay the claim.

(b) Amount of Indemnity.

The amount of indemnity payable cannot exceed, in Alberta \$6.00 per acre, in Saskatchewan 5 per cent. of the damage and in Manitoba \$4.00 per acre. Any taxes unpaid are deducted from the indemnity payable. In Alberta and Saskatchewan the loss must be equal to at least 5 per cent. of the value of the crop insured.

(c) Where Taxes Insufficient.

Where taxes collected in any year are insufficient to meet all claims in full, the expenses of the carrying on of the scheme are first paid and the balance is divided among all claimants in equal proportions. In Saskatchewan any municipality failing to pay the hail insurance tax may be excluded from the benefits thereof.

(d) Moneys Exempt.

Moneys payable as indemnity for loss by hail cannot be garnisheed, attached or assigned, except in regard to a debt for seed grain from which the crop hailed out was grown. They are in the same position as other exemptions from seizure for debt.

Discontinuing Scheme. (Alberta).

Any municipality living out of the hail insurance district may at any time after the expiration of 5 years after the formation of such hail insurance district by a by-law approved by a majority of the resident electors of the municipality voting thereon repeal the former by-law which introduced the scheme. If as a result of a municipality so

deciding to remove from the district less than 20 municipalities remain in the district that number winds up the affairs of the district.

Saskatchewan.

If any year 25 per cent. of the resident ratepayers of any municipality file with the council before November 1st a petition requesting the council to repeal the by-law formerly passed respecting hail insurance the council must pass such repealing by-law and submit it to the electors to be voted on at the next municipal election. If a majority vote in favour of the repealing by-law the scheme is discontinued in that municipality.

Manitoba.

At any time after the scheme has been in force in any municipality for at least one year, 50 electors qualified to vote on the original by-law, whose names appear on the last revised assessment roll, may by petition request the council to pass and submit to the electors a by-law repealing the former by-law. If such repealing by-law receives the support of three-fourths of all the qualified electors the scheme is discontinued and no new hail insurance by-law may be submitted for at least three years.

HOMESTEADS AND PRE-EMPTIONS

THE law relating to homesteads and pre-emptions is contained in an Act of the Parliament of Canada known as the Dominion Lands Act. It applies to all lands owned and controlled by the Parliament of Canada in the Provinces of Alberta, Manitoba and Saskatchewan and the lands lying east of the Rocky Mountains in British Columbia. All matters connected with Dominion lands are under the control of the Minister of the Department of the Interior. The Minister of the Interior will be referred to in this chapter as the Minister and the Department of the Interior as the Department. All enquiries respecting Dominion lands which are desired to be made dir-

ectly to the Department should be addressed to the Minister or Deputy Minister, Department of the Interior at Ottawa.

Homesteads.

(1) Notice of Survey.

No lands are open for entry as a homestead until such lands are surveyed in accordance with the Dominion Surveys Act and until notice that the lands so surveyed shall be open for entry on a day set is posted for at least 30 days in the Dominion lands office in the district in which the lands are situated and in newspapers both in that district and in the capital of the province.

(2) Lands Available for Entry.

All unoccupied, unreserved agricultural lands still undisposed of (see paragraphs on school lands, Hudson's Bay lands and water power) are available for entry as a homestead. The grant of a homestead carries with it no right to any salt, coal, petroleum, natural gas, gold, silver, iron or other minerals within or under the lands or to any exclusive right to or property or privilege with respect to any lake, river, spring, stream or any other body of water bordering on or passing through the land covered by the entry.

(3) Who May Apply for Homestead.

Any person, man or woman, the sole head of a household, or any male 18 years of age or over, who is a British subject or declares his intention to be such may apply for a homestead. Any male 17 years of age or over may have a homestead reserved for him until he becomes 18 years of age if he lives on a homestead or on land not less than 80 acres in extent held by his father, mother, brother or sister situated not more than 9 miles distant in a direct line from the land to be reserved. He must make application within one month after coming of age, i.e., 18 years, in the manner described below and if the period of reservation includes the months of June and July he must break 5 acres on his reservation.

Squatters.

Squatters who have settled on unsurveyed land in good faith and have made improvements on the land have, for a period of 6 months from the time notice is served upon them by a Dominion Land Agent that the land is open for entry, a right prior to anyone else to enter for the land upon which they have squatted. They must, however, make formal entry within such period of 6 months.

(4) Extent of Homestead.

A homestead includes 160 acres of land. Where from any cause it is less than this amount the homesteader is permitted to have added to his homestead sufficient land from adjoining lands to make up 160 acres.

(5) Application for Entry.

Application for homestead must be made to the agent or sub-agent of Dominion lands at the land office of the district in which the lands to be homesteaded are situated. The application must be made in person between the hours of 9 a.m. and 5 p.m. on any day not a Sunday or Public holiday (as to what days are holidays see chapter on Bills of Exchange). Forms of application and affidavit in support are supplied at the Dominion lands offices. A fee of \$10 is payable with the application.

Upon the acceptance by the Dominion lands agent of the application and the fee a receipt is issued by him to the person applying. Such receipt constitutes a complete entry for the homestead and gives the homesteader until he obtains patent a clear title to the land against the whole world. He must enter upon and commence residence upon the homestead within 6 months of application. The homestead entered for is to be for the sole use and benefit of the person applying called hereafter the homesteader and if for another the homestead entry is liable to be cancelled.

Second Homestead.

Any homesteader may abandon his entry outright or in favour of a father, mother, son, daughter, brother or sister and make entry for another homestead but unless

the homesteader has obtained his patent to a homestead prior to June 2nd, 1889, he cannot make entry for another homestead. This does not apply to purchased homesteads mentioned below.

(6) Requirements as to Residence and Cultivation.

Before obtaining a patent for his homestead the homesteader must perform the following homestead duties.

(1) He must enter into possession of the homestead by commencing to reside thereon within six months after the application was made at the Dominion lands office. Such limit of six months may on proper cause being shown be extended to twelve months but no longer.

(2) He must continue to hold the homestead for his own sole use and benefit for three years from the date of application.

(3) He must reside upon the homestead for a period of six months during each of the three years. Permanent residence upon a farm not less than 80 acres in extent and not more than 9 miles distant from the homestead, in a direct line, owned by him or his father, mother, son, daughter, brother or sister or upon the death of such relative the continuing to reside upon the farm is good residence upon the homestead.

(4) He must erect a habitable house on the homestead and cultivate such an area each year as shall be satisfactory to the Minister. In certain cases stock may be kept instead of cultivation (as to this, see paragraph below entitled "Keeping stock instead of cultivation").

(5) He must be a British subject or declare he will become one as soon as he has resided in Canada the required time (see chapter on Naturalization).

(7) Issue of Patent.

After the expiration of three years from the date of application for the homestead the homesteader or, if he is dead, his executor or administrator or, if insane, his guardian, may make application to the Department through the Dominion land office where application was originally

made, for a patent. The proof required as to the homestead duties including residence and cultivation must be made before the local Dominion land agent or officer acting for him as a sub-agent in the form of a sworn statement by the homesteader applying, corroborated by the sworn statements of two disinterested persons resident in the vicinity of the homestead. Before a patent issues the homesteader must be either a British subject or declare his intention to be such when his term of residence expires. Unless he becomes insane before the issue of the patent, application for the patent must be made within five years of date of application for entry.

Death of Homesteader before Patent Issues.

In the event of the death of the homesteader before the patent issues the deceased homesteader's executor or administrator may apply for the patent when three years have elapsed from date of the application for entry upon completing the requirements as to cultivation (or if stock is kept the requirements in that behalf) and the erection of a habitable house only or he may assign the deceased homesteader's interest in the homestead to some other person eligible to enter for a homestead and such person who purchases such interest shall if he holds it for his sole use and benefit and upon completing the homestead duties not completed by the homesteader have the right to apply for a patent.

Homesteader Becoming Insane or Physically Disabled.

Where the homesteader becomes insane before issue of the patent his guardian may complete the homestead duties in the same way as an executor of a deceased homesteader may do. In case the homesteader becomes physically incapable of completing the residence requirements the Governor-in-Council may dispense with such residence requirements.

Homesteader's Illness, etc.

Where the homesteader loses time through illness, calamity or the returning to his native land to bring out his wife and children, the time for residence may be ex-

tended upon proof of the loss of time to the Minister through the local agent, but any leave of absence from residence granted will not be counted as residence in application for patent.

Homesteader on Active Service.

A homesteader volunteering for active service in the local militia or overseas forces will have his time while on active service and also a period of three months after discharge counted as residence upon the homestead, and in case disablement incurred while on active service prevents him from completing homestead duties patent will be issued to him on proof of these facts.

Registry of Patent as Title.

When a patent to a homestead is issued it is forwarded to the Registrar of Land Titles for the land registration district in which the lands are situated and thereupon the Registrar issues a certificate and duplicate certificate of title to the quarter section (see chapter on Title to Land).

Mistake in Issue of Patent.

Where any patent is wrongly issued or where two patents for the same land have been mistakenly issued the Minister has power to issue a corrected patent and grant to any person deprived of land other land of equal extent or repay any money paid. Claims for loss through errors must be sent forward within one year from the discovery of the error. Where there is a deficiency of land in the issue of patent other lands may be given in place or a refund made of moneys paid. Claims for compensation must be made within five years of the issue of the patent.

(8) Cancellation of Entry.

A homesteader's homestead rights before the issue of patent may be cancelled in any of the following cases:

(1) If the homesteader fails to commence residence upon the homestead within 6 months after application therefor or within such longer time as the Minister may grant.

(2) If the homesteader fails to apply for patent within 5 years of date of application for homestead.

(3) If entry rights are granted through any error, fraud, or misrepresentation.

(4) If in any year of the period of 3 years prior to grant of patent, the homesteader fails to perform the homestead duties required for that year. Any person applying for a homestead cancelled for this cause may have to pay for improvements done.

(5) In the case of any person personating an entry for anyone else. In this case the person so personating entry may be prevented applying for any other homestead.

(6) In case the land granted as a homestead is valuable for timber, cancellation may be made within six months of application but compensation will be allowed for improvements.

(7) Cancellation may also be effected where the land granted as a homestead is necessary for the protection, location or construction of any water supply or for the development of any water power or for the purposes of any harbour or landing.

Selling Before Patent Issues.

Any person buying, selling or trading, or professing to do so, any entry for homestead before the patent issues is liable to 2 years imprisonment.

(9) Pre-Emptions.

This section applies to certain prescribed districts. Information as to the boundaries of these districts may be obtained at any Dominion land office. In these districts any homesteader who has entered for a homestead and has not received a patent therefor, and who has not disposed of his homestead, but continues to own and reside upon it and has not received a patent for any pre-emption, may apply to pre-empt any quarter section lying alongside of his homestead or separate therefrom only by a road allowance.

Application for Pre-Emption.

Application must be made at the same Dominion land office where application for homestead was made. Forms of affidavit in support are obtainable at the Dominion land office. A fee of \$10 is payable with the application. Application may also be made to a sub-agent of Dominion lands. Upon receipt of the application and fee of \$10 the agent issues a receipt which entitles the homesteader receiving it to all the rights to a pre-emption which a similar receipt given upon application for a homestead gives to the homesteader.

Price Payable.

The price payable for such pre-emption is \$3 per acre payable as follows: one third within three years of application for pre-emption, the balance in five equal annual instalments, without interest. Interest is payable at the rate of 5 per cent. per annum on overdue instalments. Payment in full may be made when pre-emption duties are completed.

Pre-Emption Duties.

Before patent to a pre-emption will be granted, certain pre-emption duties must be completed. These are as follows:

(1) Homestead duties must all be fulfilled and the patent obtained for the homestead.

(2) Homesteader who has also entered for a pre-emption must reside on homestead or pre-emption for at least six months in every year for six years from date of entry for homestead. But whenever the homesteader resides on a farm within 9 miles of his homestead instead of residing upon the homestead, he must reside on either the homestead or pre-emption for at least three out of the six years residence required for the pre-emption.

(3) In addition to the cultivation required upon the homestead 50 acres must be cultivated upon either the homestead or pre-emption but this area may be reduced upon proof to the Minister that 50 acres is excessive. Stock may be kept instead of cultivation where land is

unsuitable for agricultural purposes (as to this see paragraph below entitled "Keeping stock instead of cultivation"). Where two apply for one pre-emption the first to enter for homestead shall have the first right to the pre-emption.

Patents to Pre-Emptions.

When the above duties are completed application may be made for patent to the pre-emption in the same way as in the case of application for homestead patent. But when the patent to the homestead is granted, a patent may also be granted for pre-emption, notwithstanding that the six years of residence are not completed, if proof is made that all pre-emption duties have been done up to date of issue of homestead patent (or if instead of cultivation stock is kept, proof must be made that the following stock has been kept, viz: first year 5 head, second year 10 head, and after second year 24 head of cattle, see paragraph below on keeping stock instead of cultivation) that 50 acres in addition to those cultivated for homestead requirements are under cultivation and that the purchase price of the pre-emption has been paid in full, or is tendered.

Cancellation of Pre-Emption.

Pre-emption rights may be cancelled for causes the same as those mentioned in the case of homesteads, and in addition thereto:

(1) If the person having entered for the pre-emption fails in any year to perform his homestead or pre-emption duties, his pre-emption entry may be cancelled and the amount he has paid therefor be refunded.

(2) If he fails to apply for patent for the pre-emption within 8 years of entry therefor, his entry is liable to cancellation.

Other provisions mentioned above as applicable to homesteads are applicable also to pre-emptions.

(10) Purchased Homestead.

In certain districts where pre-emptions are not available quarter sections of land are available for entry in a

similar manner. These are styled purchased homesteads. Information may be obtained at any Dominion Land office as to districts in which purchased homesteads are available. Any homesteader who has been unable to pre-empt any land may, if his homestead is in any of the above mentioned purchased homestead districts, make application to obtain by purchase a purchased homestead. The regulations respecting these homesteads are as follows:

Application.

(1) Application may be made at the Dominion Lands Office where the homestead was applied for, in the same manner upon forms supplied for that purpose as in the case of homestead or pre-emption.

(2) Prior to the application a patent must have been obtained to the original homestead, or all homestead duties must have been completed and proof supplied to that effect.

(3) A fee of \$10 is payable on application.

The receipt given by the Dominion Lands Agent for the application and fee entitles the person applying to all the rights to the purchased homestead, as in the case of similar receipts given upon application for homestead and pre-emption.

Purchased Homestead Duties.

(1) The homesteader applying must reside upon the purchased homestead for a period of six months in every year for 3 years after application therefor. If the purchased homestead is within nine miles of the free homestead, residence upon the free homestead is good residence upon the purchased homestead.

Cultivation.

(2) An area of 50 acres must be cultivated on the free homestead or purchased homestead. Where land is unsuitable for cultivation stock may be kept instead (See paragraph below, entitled keeping stock instead of cultivation).

House.

(3) A habitable house of the value of \$300 must be erected upon the purchased homestead.

Price.

(5) The price payable is the same and upon the same terms as the price payable for a pre-emption.

(5) No second purchased homestead may be granted. Application for patent is made in the same way as in the case of an application for patents to free homesteads and pre-emptions, and the above provisions relating to homesteads are applicable also to purchased homesteads.

Cancellation.

A purchased homestead is liable to cancellation for the following causes:

(1) If in any year after application for a purchased homestead applicant fails to perform any of the above requirements.

(2) If the applicant for a purchased homestead fails to apply for patent therefor within five years after application.

(3) If the person applying fails to obtain patent to his free homestead.

(11) Charges Against Homesteads, etc.

In case a homesteader has completed all homestead and pre-emption or purchased homestead duties but still owes the Government moneys for seed grain or the price of the land or for any other matter, a patent may nevertheless issue, but a charge in the nature of a mortgage will be entered up against the title issued by the Registrar of Land Titles.

(12) Assignment and Sale of Homestead.

All sales and assignments of homesteads, pre-emptions and purchased homesteads before a patent issues therefor, except those above mentioned, are utterly void and all agreements to sell the same after patent issues, made before patent issues, are likewise void and render the homestead liable to forfeiture, i.e., cancellation. Any

person paying or receiving money to abandon his homestead is liable to have the homestead cancelled and to forfeit all rights to apply for another. These provisions do not apply to lands taken by railways for right of way, stations, grounds, etc. (see Railways) so as to prevent any homesteader selling lands to a Railway Company for such purposes.

(13) Purchase of Other Agricultural Lands.

Other lands suitable for cultivation may be purchased from the government, but such lands must not in any case exceed a total of one section, 640 acres, upon terms and conditions fixed by regulations in force from time to time in that behalf.

(14) Keeping Stock Instead of Cultivation.

In the case of all free homesteads, pre-emptions and purchased homesteads, where the local Dominion Lands agent satisfies the Minister that the land homesteaded, etc., is not suitable for agricultural purposes, he may permit stock to be kept instead of requiring cultivation. All homestead, pre-emption and purchased homestead duties stated above must be performed with the exception of the requirement as to cultivation. At the end of each year the person upon the homestead, etc., must furnish the minister with a statutory declaration, declaring that the required number of stock have been kept by him that year and are solely owned by him, and when he applies for patent, he must furnish proof in the same way that proof of other homestead, etc., duties is furnished that the requirements as to keeping stock have been complied with. Before patent is granted the homestead inspector must report that requirements as to stock have all been carried out.

These requirements as to keeping stock instead of cultivation are as follows:

For a homestead or a purchased homestead during the whole of each year the following stock must be kept.

During first year 5 head, second year 10 head, and after second year and up to application for patent, 16 head.

In the case of a pre-emption, during fourth and fifth year, 20 head and after fifth year 24 head. These must be kept solely by the person who will make application for patent and be owned solely by him.

The stock must be kept on the free homestead, pre-emption or purchased homestead as the case may be, and suitable buildings must be provided wherever the stock are kept and the whole quarter section upon which the stock are kept must be surrounded by a substantial fence, The stock may be kept either for summer grazing or winter feeding.

Under the provisions of the act the stock which may be kept are cattle which include bulls, cows, and their young, or horses, male and female, and their young. Also sheep and hogs may be kept instead of cattle and horses, but 10 sheep, 10 hogs, or 10 sheep and hogs count as one head of horses or one head of cattle only.

(15) Hudson's Bay Lands.

Under the agreement between the Hudson's Bay Company and the Dominion of Canada in 1870 by which the said Company gave up all their rights to the North West Territories, the Hudson's Bay Company received in return, in addition to other rights, one 20th of all the land lying between the North Saskatchewan River and the International Boundary and bounded on the west by the Rocky Mountains and on the East by a line drawn through the city of Winnipeg. This twentieth part is ascertained as follows:

(a) In every fifth township, viz: townships 5-10-15, etc., sections 9 and 26 and in all other townships sections 8 and the S. $\frac{1}{2}$ and the north $\frac{1}{4}$ of section 26 are reserved to the Hudson's Bay Company.

(b) In fractional townships so much of the above sections are reserved as may be reserved by the minister.

These lands belong absolutely to the Hudson's Bay Company and can only be acquired from that company.

(16) Water Power Lands.

Regulations are made from time to time for acquiring lands by lease for the purpose of developing water power, and wherever any company or person obtains the right to develop such water power he may acquire private lands of other persons in the same way that lands are acquired by Railways for right of way, etc. Such lands are not open to entry as a homestead pre-emption or purchased homestead.

(17) Mineral Lands.

Regulations are issued from time to time as to the granting of natural gas, oil, coal, gold, silver, copper, and other mineral leases. The rights to mines and minerals do not pass with lands granted by patent or sold.

(18) School Lands.

In every surveyed township in Manitoba and Saskatchewan and Alberta, sections 2 and 29 are set aside as school lands, and these sections cannot be entered upon for homesteads, pre-emption or purchased homesteads. Such school lands are sold at public auction at prices fixed from time to time and on the following terms: One tenth cash down, balance in 9 equal annual payments with interest at 5% per annum. The proceeds of the sale are set aside for school purposes. School lands may also be leased.

HOTELS AND BOARDING HOUSE KEEPERS

THE word "hotel keeper" in this chapter means, unless otherwise stated, the keeper of a hotel or boarding house.

(1) Alberta and Saskatchewan.

Lien on Guest's Goods.

A hotel keeper is entitled to a lien on the luggage and other goods of guests and may seize and detain them for unpaid charges for board and lodging. While he holds the guest's goods he is responsible for them.

Sale of Guest's Goods.

If his charges remain unpaid for three months after seizure, the hotel keeper may post up on the outside of the hotel a notice of sale of the goods. Such notice must be posted up a week before the sale and must state the name of the guest, the amount due, a description of the goods, the time and place of the sale and the name of the auctioneer. Any balance of the proceeds of the sale, after payment of the charges, is paid to the guest, or if he cannot be located, to the provincial treasurer.

Hotel Keeper's Responsibility for Luggage (Does not apply to boarding-house keeper).

A hotel keeper is liable to the extent of \$200 for the loss of or injury to the goods of a guest while such goods are in his hotel, except where the goods are lost or damaged through the carelessness of the guest or any of his servants, and the hotelkeeper's liability is unlimited if the loss or damage is due to the neglect of the hotelkeeper or any of his servants or if the goods have been deposited with him for safe custody or if the goods lost or damaged are a horse or other live animal or any gear thereof or a carriage. The hotelkeeper may require the goods to be deposited in a box or other receptacle fastened and sealed by the person depositing them. If a hotelkeeper refuses to accept or in any way prevents a guest from depositing goods, trunks, etc., with him for safe keeping, he will have no right of lien on the guest's goods and will be liable for their damage or loss to an unlimited extent. The limita-

tion of the hotelkeeper's liability and his right of sale under his lien exist only while a copy of "The Hotelkeeper's Ordinance" is kept posted in the office and public rooms of the hotel.

False Pretences (Does not apply to boarding house keeper).

Persons obtaining board or lodging at a hotel by fraud or fraudulent representation, are liable to heavy penalties and imprisonment.

(2) Manitoba.

The law in Manitoba is similar to that stated above, except that if a guest's goods seized by a hotelkeeper are under the value of \$25.00 a sale may be held at the end of one month.

A hotelkeeper is not liable for goods lost, damaged or stolen if the guest's room is provided with proper lock and key and the loss results from the guest not keeping his door locked. If there is a checking room for luggage, a hotelkeeper is not liable unless the guest deposits his luggage in the checking room and receives a check therefor.

(3) British Columbia.

The law is also similar to that in Alberta and Saskatchewan, except that goods may be sold only at the end of a year after detention by the hotelkeeper. The notice of sale must be published in a local newspaper a week prior to the sale. The limitation upon the hotelkeeper's liability for the loss or destruction of guest's goods is \$50.00.

HUSBAND AND WIFE.

(Unless otherwise specified the law below stated is applicable to each of the four Western Provinces.)

Marriage

(a) Promises to Marry.

In earlier days promises to marry were considered marriages, no ceremony being necessary, but where a ceremony was necessary the persons promising to marry could afterwards be compelled to have the marriage ceremony performed. Now no promises to marry can be enforced by either party by compelling marriage.

(b) When Valid.

Promises to marry need not be in writing and are valid if made by word of mouth. Even without distinct proof of a promise it may be inferred from the conduct of the parties.

(c) Damages for Breach.

Where a person who has promised to marry another refuses to do so, the person so promising, cannot as is stated above, be compelled to carry out the promise, but any person wrongfully refusing to carry out the promise to marry, whether man or woman, may be sued for his or her breach of promise to marry and money damages be recovered, varying with the station of the parties and the circumstances of the case. Where the person breaking the promise to marry is guilty also of seduction, very heavy damages may be recovered. The person suing must show that he or she was willing to marry the other and had offered to do so. No damages may be recovered for a breach of a promise to marry made by a person married at the time of the making of the promise.

(d) Infant's Promises.

A person under 21 is not bound by a promise to marry but a person under 21 may sue another over 21 for the latter's breach of promise to marry.

(e) Answers to such an Action.

Any person sued for breach of promise to marry may generally defend such an action at law by showing that after the promise he or she found out that the other was suffering from some serious disease or was insane, or unchaste, or was a bad character, or that the other party had released him or her from the promise or that he or she had offered to marry the person suing.

Who May Marry.

Only the following persons may marry. Disobedience of these rules renders the marriage null and void, even though the parties afterwards live together.

(a) Age.

Males 14 years of age or over and females 12 years of age or over may marry in Manitoba. In Alberta no one under 15 years of age, and in Saskatchewan no one under 16, may marry unless for the purpose of making illegitimate children legitimate.

(b) Soundness of Body and Mind.

Lunatics so found by inquisition and idiots incapable of knowing what they are doing may not marry.

(c) Relationship.

Close relationship by blood is a bar to a valid marriage. The persons who may not marry one another include brothers and sisters, uncles and aunts, nephews and nieces, first cousins, but not second cousins. There is no legal objection to a man marrying his deceased wife's sister or vice versa.

License or Banns.

Persons desiring to be married must first of all either procure a license from an authorized issuer of marriage licenses, or obtain a publication of the banns, that is an announcement by a clergyman of the proposed marriage made at some place of public worship, during service, on a number of Sundays previous to the marriage.

Infants.

Persons under 21 years of age, in Manitoba 18 years of age, cannot obtain a marriage license without the consent of the father of such minor or if he be dead, the mother or duly appointed guardian. In Alberta and Saskatchewan any female over 18 years of age who is supporting herself and living apart from her parents does not need to obtain such consent.

Before the license is issued one of the parties applying must make an affidavit or statutory declaration stating that there is no legal impediment of the nature of those mentioned to the marriage of the parties.

Marriage Ceremony.

The marriage ceremony may be performed either by a clergyman or, except in Manitoba, a marriage commissioner.

(b) Marriage by Clergymen.

Ministers of any denomination, duly ordained by the rites and ceremonies of such denominations, including commissioners and staff Officers of the Salvation Army, duly resident in the Province where the marriage takes place (In British Columbia one month's residence is necessary) may perform the marriage ceremony. The ceremony must take place in the presence of two witnesses, but may be according to any form whatsoever subscribed by the laws of the religious denomination with which the minister performing the ceremony is identified.

(c) Civil Marriage. (British Columbia, Alberta and Saskatchewan).

Persons who do not wish to be married by a clergyman must within 14 days prior to the date of the intended marriage, give notice in the prescribed form to the marriage commissioner (In British Columbia, the Registrar) of the district in which the parties desire to be married of the proposed marriage and both parties must forward to the commissioner with such notice a declaration showing that they are both qualified to marry. At the expiration of such period the parties may appear before and be mar-

ried by such marriage commissioner in the presence of two witnesses.

Married Women's Property Rights.

(1) Owning Lands and Goods.

A married woman may own and hold and dispose of land and other property and sue or be sued in respect of it in same way as if she were a single woman or a man and without the consent of her husband. Any contracts she enters into bind only her separate property and judgments against her bind only such property.

(2) Stock in Companies—Deposits in Banks.

A married woman is absolutely entitled to all stocks and moneys deposited to her credit before and after her marriage, independently of her husband, and may deal with the same without any consent or concurrence on the part of her husband.

(3) Protecting Property.

A married woman has in respect of her property the same rights of protecting the same against all persons, even her husband, that a man or single woman has.

(4) Pre-Marriage Debts.

A married woman is liable in respect of all debts and liabilities of every kind incurred and contracts entered into by her and for damages for wrongs and injuries committed by her before marriage and she may be sued for the same after marriage, her own separate property being liable but her husband is liable for such debts and liabilities only if he receives property through his wife or the liability is one for damages for a wrong done by the wife, and then only to the extent of the property he receives.

(5) Debts and Liabilities After Marriage.

A married woman is liable for all debts, etc., and wrongs done after marriage to the extent of her private property. Her husband is liable for wrongs committed by her after marriage and if she acts as his agent he is liable for contracts entered into by her as such agent.

(6) Executor or Administrator.

Married women may be appointed to act as executors or administrators.

(7) Husband Conveying his Property to Wife

This is perfectly valid unless the husband is insolvent when he makes the transfer, or is made so by reason of the transfer (See Chapter on Assignments).

(8) Insurance.

A married woman may effect insurance on her own life or upon that of her husband.

(9) Insurance for Benefit of Wife and Children.

If a man wishes insurance on his life to be payable to his wife, and children, whether paid at his death or during his life, free from all claims of the husband's debts, he may either before or after marriage, have it expressed in the policy that the insurance money is for the benefit only of wife and children, or wife only, or children only, or may after the policy is issued make a declaration identifying the policy and stating that the insurance moneys payable under the policy are payable for the benefit only of wife and children. Unless the husband specifies, either in the policy or an endorsement thereon or by his will, the shares, the wife and children are to all take equally. In Saskatchewan, Manitoba and British Columbia.

In Alberta if the assured is unable to pay the premiums he may surrender the policy for such paid up insurance as he is entitled to, notwithstanding any declaration in favour of a wife or children.

(10) Wills.

A married woman may make a will in the same way as any other person.

(11) Probation of Minor Children's Earnings.

Where a woman is long separated from her husband for any lawful cause, such as his imprisonment in a Penitentiary, Lunatic Asylum, desertion, cruelty or adultery of husband, she may obtain an order from a Judge entit-

ling her to the earnings of her minor children, free from any claim by her husband. Whenever the parties wish it such order may be discharged.

(12) Disputes.

Questions in dispute between husband and wife respecting property may be settled by an application to a judge.

(13) Maintenance of Wife and Children.

(a) Where husband and wife live together the husband is legally bound to support both wife and all the wife's children, legitimate or illegitimate, until they obtain the age of 16 years, and the wife can pledge his credit for all goods necessary for the support of the home, but the husband will not be liable if the person who sells goods to the wife knows that the husband has refused such authority or that the wife was already amply supplied with the goods in question, or that the goods were unnecessary. Children cannot bind their father for any goods purchased by them, whether necessary or not.

(b) Where husband and wife live apart for any lawful reason, such as where they have contracted to live apart and the husband pays the wife a separation allowance, or where the wife has secured an order of the Court for alimony, and the husband pays the amount thereof to the wife, or where the wife leaves her husband and lives apart from him without his consent or commits adultery or where the wife living apart from her husband has ample means of her own, she cannot bind her husband's credit for any goods purchased by her, whether necessary for herself and children or not.

But where husband and wife are living apart and the husband does not provide for the wife or refuses to pay the amount the Court has ordered him to pay as alimony or where the husband deserts the wife or turns her away without good cause or where the wife leaves the husband by reason of his cruelty amounting to actual or threatened physical violence or the husband is guilty of adultery, or for any reason does not support the wife and children, she

can bind the husband for necessities purchased by her for herself and the children entrusted to her care. The goods must be charged to the husband or he will not be liable.

Holding Out Wife as Agent.

(c) Where the husband knowingly allows the wife to buy and sell and enter into contracts for goods or things not connected with the household he is liable to all persons dealing with the wife.

(14) Wife's Rights to Homestead.

In none of the Western Provinces have women any dower, that is, a right to a third of the husband's real estate upon his death. Provision has, however, lately been made in Alberta and Saskatchewan whereby a married woman may prevent her husband selling the Homestead (See Exemption Act as to Extent of Homestead) without her consent. All that is necessary for her to do is to file a caveat with the Registrar of the Land Titles Office of the Land Registration District in which the land is registered. So long as the caveat remains in force the husband cannot sell or lease or mortgage the Homestead without the consent of the wife. The caveat may at any time be withdrawn by the wife by written notice to the Registrar. No fees are charged for filing a caveat. In Saskatchewan, whether a caveat is filed or not, the husband may not sell, mortgage or lease the homestead without the consent of his wife, who must appear before a Judge of a District Court, Registrar or other person appointed, and be examined as to whether she is aware of all her rights to the homestead and signs without compulsion by the husband.

(15) Husband Depriving Wife of Property by his Will. (Alberta only).

(a) A widow whose late husband has not left her by his will the share of his property she would have received had the husband died without leaving a will (See Chapter on Administration of Estates) may apply to a Judge for relief, whereupon the Judge may order the executors of the estate to pay the wife such extra sum as he may think proper.

British Columbia.

(b) A Homestead registered under the Homestead Exemption Act (See Chapter on Exemptions) passes absolutely to wife and children, or if wife is dead to the children, or if there be no children, to the wife.

Divorce and Alimony.

Only the Parliament of Canada may legislate on divorce or create a Divorce Court. No Province may grant divorces unless it had Divorce Courts before becoming a Province of the Dominion of Canada. The result is that in Alberta, Saskatchewan and Manitoba, as well as in Ontario and Quebec, there are no Divorce Courts and no divorce may be granted in those Provinces, while in British Columbia and in two of the Maritime Provinces Divorce Courts having been instituted prior to their becoming provinces of Canada, these Provinces have Divorce Courts which grant separations and divorces. Persons residing in Provinces where there are no Divorce Courts must apply to the Parliament of Canada for a special private act granting a Divorce. This is a rather costly procedure. A divorce obtained in a foreign country, for example, the United States, will be recognized as valid by Canadian Courts if the husband at the time of obtaining the divorce was permanently residing in the country which granted it. Divorces obtained in the United States by persons who have left Canada for the purpose of obtaining a divorce are not legally good in Canada, and subsequent marriages by such persons are bigamous.

Alimony.

The only relief available to persons residing in Alberta, Saskatchewan and Manitoba, other than a separation agreement, or an application to the Parliament of Canada for a divorce, is an application by the wife to the Provincial Courts for an order compelling the husband and wife to live apart and providing for a payment by the husband to the wife of an allowance for her maintenance, called alimony.

A wife may apply for such relief where the parties are living separated on account of the husband having been guilty of adultery or where the husband has been guilty of cruelty resulting in actual physical violence such as endangers the health or safety of the wife or threatens to do so.

A wife, although the husband may be guilty of the conduct mentioned above, is not entitled to any alimony allowance in the following cases, viz: Where the husband is not only out of employment but is also unable to work, where the wife has sufficient means of her own and is living apart from her husband; where she commits adultery or lives with another man; where she receives an allowance under a separation deed. The amount allowed varies with the husband's ability to pay and the wife's needs and the circumstances of the case. A certain allowance may be made payable by an order of Court immediately after the wife commences action.

Deserted Wives.

In Saskatchewan.

A wife deserted and not supported by her husband may apply to a Judge of the District Court of the District in which she resides, or in cities and towns to a Police Magistrate, who may summon the husband and if he is found to have deserted his wife and although able to do so, has not supported her and her children, the Magistrate or Judge may order him to pay a weekly allowance not exceeding \$10.00 per week to the wife. The payment may be enforced by seizure of the husband's goods and the husband may be committed to jail in case of non-payment. The wife is not entitled to such an allowance if she has been guilty of adultery.

In British Columbia and Manitoba.

If the husband has been guilty of assaults or actual persistent cruelty towards his wife or refuses to support her and her children as a result of which the wife is living separate from her husband the wife may apply, in British Columbia, to any Magistrate or Justice of the Peace and,

in Manitoba, to either the County Court Judge of the County or Judicial District where the parties reside or to a Police Magistrate or two Justices of the Peace. The Justice, Magistrate or Judge to whom application is made, upon hearing the parties, may order the husband to pay a weekly allowance to the wife varying with the circumstances of the case. If the husband refuses to pay he may be imprisoned. In Manitoba if the application is before a Judge he may order the parties to live separately and may provide for the custody of the children. Wives who commit adultery or have independent means are not entitled to maintenance.

Separation Deeds.

These are agreements entered into under seal between a husband and wife whereby they agree to live apart and which provide for payments of stated sums of money for the maintenance of the wife and the children entrusted to her care. Where a wife enters into a separation agreement she has no claim for alimony so long as the husband pays her what he has agreed to pay under the agreement. If the parties live together again the separation agreement becomes void. Such agreements should be drawn up by a solicitor.

Nullifying Marriage.

A marriage entered into under certain circumstances between parties who are by law prohibited to marry may be set aside by the Courts of any Province. This does not mean that in those cases a divorce is granted. Divorces are granted parties who are legally married. A decree nullifying and making void a marriage is granted where the marriage itself is illegal, and there is therefore no marriage at all. Marriage may be set aside as null and void in any province for the following causes, viz.: where either of the parties was a lunatic or idiot at the time of marriage or where the parties were persons who are prohibited by reason of blood relationship from marrying or persons already married, or if the person celebrating the marriage was a person not qualified by law so to do, or solemnized

the marriage without the formalities required by law, or where either party has been compelled against his or her will by means of force, intimidation, etc., to enter into the marriage contract.

Divorce in British Columbia.

To entitle any person to apply to these Courts for a divorce or separation, such residence is necessary as to indicate that the parties have made British Columbia their home, or intend so to do.

Divorce.

Divorce may be granted upon the proper proceedings being taken and upon the following grounds: (a) Where the husband applies for divorce proof must be made that the wife has been guilty of adultery. (b) Where the wife applies for divorce proof must be made that the husband has been guilty of either incestuous adultery, bigamy with adultery, rape, sodomy, bestiality or adultery coupled with cruelty, occasioning actual bodily harm to the wife.

The person applying for the divorce will not be entitled to the decree if he or she is guilty of adultery or condones the other's adultery, etc., or delays too long in applying to the Court for the decree.

Alimony.

The Court may if it sees fit upon granting the divorce, grant an allowance from the husband to the wife of alimony varying in amount with the circumstances of the case. The Court also provides for the custody of the children.

Marrying Again.

When a divorce has been granted and the time for appealing against it has passed, the parties may either of them marry any other person permitted by law as though the person from whom they are divorced were dead.

Judicial Separation.

This is a decree separating the parties either for a certain or indefinite period and providing for an allowance of

alimony to the wife, and for the custody of the children. The parties may not, however, re-marry. Such judicial separations are granted where the husband proves adultery on the part of the wife, or the wife proves that the husband is guilty of adultery, cruelty, occasioning actual or threatened bodily harm to the wife or desertion without just cause leaving the wife without support.

JUDGMENTS, EXECUTIONS AND ATTACHMENTS

Definitions.

THE decision by which a judge or court finally decides the matters in dispute between the parties to an action is known as a judgment and the successful party as a judgment creditor, and the party against whom the decision is given as the judgment debtor. Judgments may order acts of various kinds to be done such as the delivering the possession of land or may merely declare that certain of the parties to the action are entitled to certain property or certain rights. Most frequently the judgment merely determines that the judgment creditor is entitled to recover a specified sum of money from the judgment debtor.

When the judgment is entered in the records the clerk of the court issues on application a writ directed to the sheriff requiring him to realize out of the goods or lands, or goods and lands, of the debtor the amount of the judgment together with his costs. The sheriff may then seize, and, after proper proceedings, sell enough of the goods of the judgment debtor to realize the amount of the debt and costs of seizure and sale. In Alberta and Saskatchewan when the writ of execution is directed against lands the sheriff is required to send to the registrar of land titles for the district in which such lands are situated a copy of the execution. A record of such writ is entered in the Land Titles Office against the name of the judgment debtor and

binds all his lands in such district from the date of its receipt by the registrar. Whenever a transfer from such judgment debtor is delivered at the Land Titles Office for registration a search is made to discover whether any executions are registered against him, and if any are found they are placed upon a new certificate of title or an execution creditor may direct the sheriff and registrar to place such execution in the first place against certain lands standing in the name of the execution debtor.

In Manitoba (and British Columbia if the judgment be for \$100 or more) when such a judgment is entered in the records of the court it may be recorded in a registration office or Land Titles Office (in British Columbia, a Land Registry Office) of the province and from the time of such recording the judgment becomes a lien and charge on all the lands of the judgment debtor in the several districts in which such certificate is recorded. Proceedings to realize on the lien issued to the creditor must be taken by separate action. (See chapter on Exemptions from Seizure for property which may not be seized under execution).

Creditors' Relief Acts

In order to prevent an execution creditor getting too great an advantage over other creditors of the same debtor it is provided that where a sheriff levies money under an execution such money shall be distributed pro rata among all execution creditors and other creditors whose executions or certificates are in the sheriff's hands at the time of the levy or receipt of the money, or who deliver their executions or certificates to the sheriff within one month after he has made entry in his books of such levy. The certificate referred to is issued by the clerk of the District Court after the filing with him of an affidavit of claim and a notice to be served therewith upon the debtor. The proceedings relating to the filing of such certificate are complicated and the services of a solicitor are indispensable if mistakes are to be avoided.

In Alberta and Saskatchewan no execution may issue upon a judgment for the recovery or payment of money

after twelve years from the date of such judgment unless in the meantime there has been a payment thereon or an acknowledgement in writing by the debtor or his agent, and in such case execution may issue within twelve years after the last of such payments or acknowledgements. The judgment remains in full force and effect for twelve years. If the execution be not issued until six years after judgment an order of a judge is necessary to permit its issue.

In Saskatchewan and formerly in Alberta executions were required to be renewed every two years but now every writ of execution issued since September 1, 1914, remains in force so long as the judgment on which it is issued remains in force, but every writ of execution issued before September 1, 1914, must, in order to be effective now, have been renewed before the completion of two years from the date of such issue or from the date of the last renewal where such last renewal was before September 1, 1914.

In Manitoba judgments remain in force for ten years without renewal and executions may issue thereon at any time within six years. Executions and certificates of judgments must be renewed every two years. Executions issued out of a County Court must be renewed every year. In British Columbia the registration of judgments against lands must be renewed every two years.

Attachment of Debts

On beginning an action for a fixed sum of money the plaintiff is entitled to issue a summons known as a garnishee summons, and serve said summons upon a person whom he knows is indebted to the defendant, such person is known as the garnishee who is thereupon required to pay any moneys which he owes the defendant or which are in his hands belonging to the defendant into court to the credit of the action or if he owes more than the amount of the plaintiff's claim he may pay into court a sum sufficient to meet such claim. In Alberta, Saskatchewan and British Columbia, no debt due or accruing due to a mechanic, workman, labourer, servant, clerk or employee for or in respect of his wages or salary shall be liable to at-

tachment unless it exceeds \$25, (in British Columbia \$40), and then only for the amount in excess of \$25, but this exemption of \$25 does not apply to debts for board or lodging.

Attachment of Goods

In Alberta and Saskatchewan no goods of the defendant to the action may be seized until after judgment has been recovered against him, except where the claim is, in Alberta, for \$100 or more and, in Saskatchewan, for \$50 or more, and the plaintiff is able to show upon affidavit the cause of the debt, the amount thereof, and that he has good reason to believe that the defendant has absconded from or is about to abscond from the province leaving no personal property liable to seizure for debt or has attempted to remove such personal property out of the province or to sell and dispose of the same with intent to defraud his creditors generally, or the plaintiff particularly; or keeps concealed to avoid service of process and that the plaintiff verily believes that without the benefit of such judgment the plaintiff will lose his debt or sustain damage for the amount; also to file an affidavit to the same effect by one or other credible person who is well acquainted with the defendant. Where the debtor has absconded or is about to abscond from the province leaving no wife or personal property behind him or is exempt to seizure.

In British Columbia a debtor owing \$100 or more may be arrested on proof that he is about to leave the province, and one who has left or is about to leave is liable to have his goods seized upon a showing that he is so doing with intent to defraud his creditors.

LANDLORD AND TENANT

THE relationship of landlord and tenant is created when an owner of land (the landlord) allows a person (the tenant) to occupy his land and receives therefor payment in the way of rent. The right thus granted by the landlord is called a tenancy or lease. Such lease may, if for less than three years, be by word of mouth, but if for a longer time, must be in writing and should be registered in the Land Titles Office.

A lease for more than three years not in writing is probably good at least as a tenancy from year to year, whether or not there is a verbal agreement entered into between the landlord and the tenant as to the other terms of the tenancy, if the tenant has entered into possession of the premises with the landlord's consent and the landlord accepts payment of the rent.

Lodgers.

Are occupiers of single rooms or suites who have no control of the premises, the landlord retaining such control.

Servants.

A servant occupying premises of his master is only a tenant if such premises are occupied for the servant's own purposes. He is not a tenant if he occupies the premises to carry on his duties for his master.

Who may be Landlords and Tenants.

Any person having title to property and able to contract may give a lease. Any person able to contract may accept a lease. A company can only make or take a lease when empowered to do so by its charter. When co-owners or joint owners give or take a lease, all join. (When purchasers of land give a lease the vendor should join). When a mortgagor gives a lease of land mortgaged, the mortgagee should join. Executors and administrators

may grant leases. Infants may grant leases of lands owned by them, and take leases, but may disaffirm or confirm the lease when they come of age. Married women may also lease land owned by them.

Kinds of Tenancies.

(a) Yearly Tenancies.

Where there is no document giving a lease for a specified time and the rent is payable yearly, half yearly, or quarterly, a yearly tenancy is created, but not if the parties agree otherwise.

(b) Periodic Tenancies.

These are tenancies for no certain length of time, which are granted from year to year, month to month and week to week, etc., as the case may be. They are not usually granted by writing, but come into effect by the landlord admitting a tenant into possession of his property and agreeing to allow him the use of the premises from year to year, month to month, etc., or, whether the landlord expressly so agrees or not, his allowing a tenant to come into possession of the premises and accepting rent payable by the year, quarter, month or week creates in consequence a yearly, quarterly, monthly or weekly tenancy, unless the parties otherwise agree.

Also when a tenant remains on the premises after some fixed term has expired and the landlord accepts rent by the year, quarter, month, etc., a yearly, quarterly, monthly, etc., tenancy is created.

(c) Tenancies for Fixed Periods.

These are created by leases in writing, or by verbal contracts if for three years or less. The lease terminates only when the term of years or months mentioned therein has expired, or upon a breach of covenants by lessee. Both makers (i.e. lessor and lessee) are bound by such lease and may be compelled to perform all that they agree by such lease to perform. Leases may be granted for terms of months, a year, ten years, ninety-nine years, or for any

fixed length of time so long as the time is specified. (See Chapter of Titles to Land, also as to Registration). Leases cannot be given for an unlimited period, but the exact duration of the lease, for example, a lease for the life of the landlord, may be unknown at the time of letting.

Underleases.

Any lessee or tenant having a lease for a certain period of time or being a tenant from year to year, may underlet to another called the under lessee, but the under tenancy so created must be for a time, if only a day, shorter than the period for which the tenant holds. If it is for the whole time, it will be considered an assignment of the lease. The under tenant is liable only to the tenant not to the original landlord. The under lessee should be bound in the lease to the tenant by all the covenants in the original lease. Upon an assignment of a lease the under-tenant is bound to the original landlord.

Assignment or Transfer of Lease.

The lease may be transferred by the lessee in the manner mentioned in the chapter on Titles to Land. The person to whom the lease is transferred, called the assignee or transferee, becomes generally bound by all the covenants such as to pay rent, repair, etc., the original tenant is bound by. The original tenant is also bound by such covenants. The assignee of the lessee is generally by the terms of the transfer bound to indemnify the original tenant in case the failure by him (the assignee) to perform any of the covenants in the original lease obliges the original tenant to perform them. When the assignee transfers the lease to another, he ceases to be liable on any of the covenants. The original tenant and the second transferee are then the only persons liable.

Covenants.

These are promises entered into both by the landlord and by the tenant with one another in respect of acts to be performed by them in connection with the land leased.

For the breaking of these covenants a lease may generally be terminated. The following covenants are implied in all leases for three years or more, that is the parties are presumed to have entered into such covenants when they executed the lease. The lease may of course contain other covenants and may exclude these.

(a) Covenants by the Landlord.

Possession of Premises.

As soon as a lease has been executed the tenant is entitled to possession and occupation of the premises leased and can compel the landlord to give him such possession. So long as the tenant performs his own covenants he is entitled to possession of the leased premises until the time for which the lease is to run has expired.

Quiet Enjoyment.

A promise is implied on the part of the landlord that so long as the tenant has rightful possession of the leased premises, he shall not be disturbed by the landlord or any person in any way claiming a right to the premises, through the landlord, so as to affect or obstruct the tenant's rightful use of the premises.

The landlord may also covenant with the lessee to pay taxes and rates, to maintain the premises, to renew the lease if the tenant so desires and also to give an option to the tenant to purchase the property, and may also covenant respecting any other matter the particular circumstances and nature of the case may require. In no case will the landlord be bound by these covenants unless they are mentioned in the lease.

(b) Covenants by the Tenant.

Rent and Taxes.

The tenant is bound to pay the rent stated in the lease at the time stated and also all rates and taxes payable in respect of the leased premises during the continuance of the lease.

Repairs.

The tenant also is bound to keep the premises in a proper state of repair except where damage occurs to a building by accident from storms, lightning and tempest. The tenant is also bound to give up premises when the time is up.

Fixtures.

Fixtures are articles and erections attached to the soil or to buildings with the intention that they shall permanently remain in such position, or are so placed or fastened that their removal will cause injury to the buildings or land to which they are affixed, such as windmills, sheds, stationary engines, articles forming a permanent part of buildings, as furnaces, shelves, trade fixtures.

All fixtures upon the premises leased pass to the use of the tenant when he enters. Similarly fixtures erected or affixed to land and buildings by a tenant pass to the landlord when the tenant's time is up. But the latter rule has been so relaxed that tenants may, while in possession of the premises or within a reasonable time after the end of the term, remove all fixtures except those which would cause injury to buildings by their removal. As to unremovable fixtures provisions should be made regarding them in the lease, or otherwise they pass to the landlord. (See below as to fixtures being exempt from seizure for rent).

How Tenancies are Terminated.**Tenancies for a Fixed or Determinate Time.**

No lease can be given for a period which will not come to an end. Leases for an uncertain length of time, such as leases for life, terminate on the happening of the event upon which they were intended to end, e.g., the death of the lessor, and leases for any certain period of time, such as six months, one year, five years, ten years, ninety nine years, etc., terminate by the time for which they were given running out. No notice to quit is necessary in such tenancies for such periods of time in order to terminate them when the time for which the lease is given has expired, but such lease may provide for its termination be-

fore the time has run out by either party giving the other notice to quit. (See following paragraphs). If the tenant remains with the landlord's consent after the time has run out, the tenancy becomes a yearly tenancy, unless the parties otherwise agree.

Renewal of Lease.

Often leases provide for renewal for a further period. Such promises to renew are usually conditional upon the tenant performing strictly all his covenants, and giving notice at a certain time that he wishes to renew. If the tenant complies with such conditions he can compel the landlord to renew the lease for the time he has promised to renew.

Non-Payment of Rent.

Leases generally provide that the lease shall come to an end and the landlord have a right to retake possession of the premises in case of non-payment of rent. The lessee, although he has made default of rent, will not usually lose his lease if he tenders the full amount of rent to the landlord, together with any expenses such non-payment has cost the landlord.

Forfeiture for Non-Performance of Covenant.

The lease also generally provides that the lease will immediately terminate, if the tenant at any time before the lease has run its full length of time, fails to perform any of the covenants he has promised the landlord to perform, such as the covenant to pay taxes, insure, repair, the covenant against assigning or sub-letting without leave, fencing, cultivating, etc., the covenant not to cut timber, or make alterations, etc.

Respecting the above mentioned implied covenants the landlord has the following rights:

Landlord Viewing Repair.

The landlord is entitled to enter at any time upon the premises and view the state of repair and if dissatisfied may leave at the tenant's residence or upon the leased premises a notice of defective repairs and require the tenant to remedy the same in a reasonable time.

Re-Possession by Landlord.

The landlord is entitled to enter upon the premises and re-take possession, if for two calendar months the tenant fails to pay rent or to perform any of his covenants, or if after the time mentioned in a notice to the tenant, the tenant fails to make the repairs required in such notice.

Subletting.

Unless it is expressly mentioned in the lease that the tenant may not do so, he may assign or sub-let without leave of the landlord, and unless express reference to the contrary is made in the lease he is not bound to insure the buildings, to fence, to cultivate, to refrain from cutting timber, or make alterations or from carrying on a trade.

New Lease or Surrender.

A lease may also come to an end before the time has run out if the tenant surrenders up the premises, by agreement or without, and the landlord accepts such surrender, or if the landlord gives the tenant a new lease or leases the premises to someone else with the tenant's consent. This surrender does not affect the rights of under tenants.

Merger.

Where the tenant purchases the premises this operates in law as a merger of the lease, but such merger does not affect the rights of under tenants who hold their leases then directly from the tenant who purchased the property.

Notice to Quit.

Where the lease so provides either party may terminate it by serving the other with a notice to quit. This is a notice given by either landlord or tenant to the other terminating a continuing tenancy, or a lease for a fixed period of time, where such lease so provides. The drawing, serving, etc., of such notice are hedged around with many technicalities, all of which cannot be stated here. It would be advisable in most cases to have the notice prepared and served by a solicitor. Where it is attempted the following rules should be carefully observed. All cases cannot here be provided for, and there is nothing easier, either for a

layman or a solicitor, than to serve a notice to quit which for want of something is invalid and of no effect.

Periodic Tenants.

Tenancy from Year to Year.

When a tenancy from year to year has been created in the manner above described, it can only be put an end to by what is called "Notice to Quit." The landlord and tenant may agree as to the length of such notice and the time when the tenancy may be terminated by such notice. They may provide for the tenancy being terminated by one or two months' notice. Where they do not agree a yearly tenancy can only be terminated by a six months' notice to quit, **given six months before the year ends.** If not then given the tenant is entitled to another year, the next notice to quit having to be given six months before that following year ends.

Quarterly, Monthly and Weekly Tenancies.

These are created as has been already described. They are terminated in each case by the landlord or tenant giving the other a quarter's, month's or week's notice to quit as the case may be. Until notice to quit is given as provided below the landlord and tenant can compel the other to continue the lease for the quarter, month, or week not yet expired and another quarter, month or week as the case may be.

Who may Give and Serve Notice.

Either the landlord or the tenant or their respective agents may serve the other with a notice to quit.

Where there are several tenants one may give notice on behalf of the rest, or where more than one person own the property one may give the notice if he has the authority of the others so to do. A landlord cannot give a notice to a sub-tenant or under-tenant, but he can give notice to an assignee of the tenant.

Who Must be Served with Notice.

Where the tenant is served it is not necessary although it is always advisable to serve the tenant person-

ally. It is sufficient if his agent is served as one of several partners or the manager of the business for which the premises are held; service on the wife or servant of the tenant is generally good if it can be shown that the tenant afterwards had word of the notice being served. The same remarks apply where the landlord is served but it is always safest to effect personal service of the notice. The notice may be sent through the mails but the letter should be registered.

Form of Notice.

The notice need not be in any particular form and where the tenancy was created verbally the notice may also be by word of mouth. It is safer always to serve the notice in writing. It should be properly addressed to the tenant. The premises occupied should be accurately described. The notice must not state that a part of the premises are to be given up, but must refer to the whole and must state with certainty when the premises are to be given up, the exact date. The notice must be dated and signed by the person giving the notice to quit.

Time When Notice Must Take Effect.

The notice must state the exact day when the tenant is to leave or the exact rental period at the end of which the notice is to take effect or if given to the landlord by the tenant the day the tenant intends to leave. That day is the last day of the year, quarter, month or week next following the service of the notice where the tenancy is a yearly, quarterly, monthly or weekly tenancy.

When Notice Must be Given.

The notice must to take effect be served as follows: Where six months' notice is to be given in a yearly tenancy, service must be effected at least one day preceding the commencement of the last six months of the tenancy. If the tenancy is to be ended by a month's notice, service may be effected prior to the commencement of any month of the tenancy and similarly in the case of a weekly tenancy. For example if the letting is by calendar months and it is desired to serve the tenant with a notice to quit,

the tenant to leave on June 30th, service of the notice to quit should be effected on a day prior to June 1st.

Overholding Tenants.

(a) Re-Entrance by Landlord.

Whenever the tenancy has been terminated in any of the ways above mentioned, viz: either by service of notice to quit in the manner described or the expiration of a tenancy for a certain period or the forfeiture by the tenant of his rights through non-payment of rent or the breaking of any other covenant, the landlord is then entitled to the land. He may retake possession of it from the tenant if he can do so peaceably, but if he cannot take possession peaceably he cannot do so by forcible means such as are likely to injure the tenant, his family or goods, or cause a breach of the peace. For this the landlord would be guilty of a crime and liable to imprisonment.

(b) Action for Possession.

If the tenant cannot be turned out by peaceable means after the landlord is entitled to possession in the manner above stated, it is necessary to apply to a Judge by a regular proceeding at law. The Judge appoints a day when landlord and tenant and their witnesses may be heard and thereupon decides whether or not the tenant must yield up possession to the landlord and the amount of rent and damages the landlord is entitled to recover from him. In case the tenant does not appear at the hearing the Judge may decide the matter in his absence provided he has been properly notified. If the Judge so decides the tenant is then ordered to give up possession to the landlord which may be enforced by the proper officer of the Court forcibly ejecting the tenant.

(c) Double Rent. (British Columbia only).

A tenant holding over after such tenant has given notice of intention to quit to the landlord or after a lease for a fixed term has expired is liable to pay for all the time he holds over, double the amount of rent he has been paying under his tenancy.

(d) **Speedy Procedure Where Rent Overdue.** (Manitoba and British Columbia only).

Where the rent is overdue, in Manitoba, three days, in British Columbia, seven days, and in British Columbia if the tenant fails to observe any covenant or condition in the lease, the landlord may serve upon the tenant a demand in writing for such payment of rent or performance of condition by serving the tenant personally or leaving the same with some grown up person upon the premises or, if the premises are vacant, such demand may be affixed to the dwelling house, building or some of the fences on the premises, and if the tenant wrongfully fails to pay the rent as demanded or perform the conditions the landlord may then apply in Manitoba to the Clerk of the County Court (in British Columbia the Registrar) of the County in which the premises are situated and upon such landlord swearing an affidavit in the form furnished, the Clerk or Registrar issues a summons to be served upon the tenant requiring the tenant to appear in 3 days before the County Judge. Upon such hearing after both parties have given evidence the Judge may order the landlord to re-enter into possession of the premises, and if the tenant refuses to give up possession the Sheriff or Bailiff may be instructed to forcibly eject the tenant. The tenant may continue to hold the premises where he pays up all rent, costs, and other expenses due the landlord.

Rent.

(a) **Definition.**

Rent is the amount paid the landlord by the tenant for the use of the premises occupied by the tenant. It may be paid in money or goods. The lease should always specify the amount of rent payable.

(b) **When, Where and How Payable.**

Rent is due and payable on the first moment of the day upon which the parties have agreed in the lease or by word of mouth that it shall be payable. If no time is agreed upon the rent is payable yearly, quarterly, monthly, weekly, etc., it is not payable until the end of each year, quarter, month or week. Rent is not payable in advance unless

the parties so agree. Rent is in arrears, i.e. overdue, on the first moment of the day following the day it is payable. The rent is, unless it is otherwise agreed, payable on the premises occupied by the tenant. The payment of rent to be legal must be made in legal tender. (See chapter on Banks for Legal Tender).

(c) To, and by Whom Payable.

The rent is payable by the tenant to the landlord or some one authorized by the landlord to receive the rent. If the tenant transfers his lease to another he continues liable for the rent, so also does the person to whom the lease is transferred. A sub-tenant is not liable to the landlord for rent but is liable to the tenant of the landlord. When the landlord dies the tenant must pay the rent to the executor or administrator of the landlord. If the landlord sells or mortgages the land leased, the tenant must after notice to that effect pay rent to the purchaser of the land or the mortgagee as the case may be.

(d) Accelerated Rent.

It is sometimes provided in the lease that the whole year's, quarter's or month's rent, as the case may be, may become immediately due and payable if any of the following events occur, viz: if the lessee's goods be at any time seized in execution or if the tenant at any time makes a Chattel Mortgage or Bill of Sale of his crops, goods, or makes an assignment for the benefit of creditors or abandons the premises or attempts to dispose of his farm stock and implements not having sufficient goods upon the premises with which to pay rent. In any of these events the rent would immediately become due and payable.

(e) Deductions.

A tenant may deduct from rent payable any sum he has expended on behalf of the landlord, such as repairs, improvements, taxes, etc.

(f) Tenant Evicted.

Where a tenant has been wrongfully evicted by the landlord or where his term has been declared forfeited by

a Judgment of the Court he ceases to be liable for rent due after the eviction, except to the extent in a case of forfeiture he is found liable for such rent.

(g) Premises Destroyed by Fire.

Unless otherwise provided for in the lease the tenant is liable for the rent although the premises are rendered useless to him by being destroyed by fire. In every case provision for such an event should be made in the lease.

(h) Garnisheeing Rent.

Rent accrues due from day to day and is consequently garnishable (that is, may be attached, i.e. legally taken control of) by any creditor of the landlord who has obtained a garnishee summons against the landlord.

Distress for Rent.

(a) Distress.

Distress means the taking or distraining of something for the purpose of enforcing payment of a debt. Distress for rent means the taking by the landlord or his agent without the aid of any officer of the law, of the goods and chattels of the tenant and selling them to realize overdue rent. The word "Distress" used here means therefore the seizing of the tenant's goods.

(b) When the Right of Distress Arises.

The right of distress arises whenever any tenancy is created whether for a term of years or a yearly, quarterly, monthly or weekly tenancy and there is rent overdue under that tenancy. The distrainer, the landlord, must be entitled to the land when the rent becomes overdue. When there is a clause in a mortgage giving the mortgagee such right he may distrain the goods of the mortgagor and sell and realize overdue interest.

(c) When Distress May be Made.

The rent must be overdue unless the parties otherwise agree and it is not so overdue until the first moment of the day after the rent fell due, but no distress can be made until after sunrise and before sunset of the day on which it is made. This means that no distress can be

made until after sunrise on the day following that on which the rent falls due. No distress can be made on Sunday. The tenant must be in possession of part of the premises. Goods of the tenant cannot be distrained after the tenant has left, nor after six months after the termination of the tenancy, nor can it be made by the landlord after he has sold the premises nor where the lease has been forfeited or otherwise put an end to and the defendant is not in possession.

(d) Where Goods May be Distrained.

With the exception in the next paragraph goods of the tenant must be distrained, i.e. seized on the premises occupied by the tenant. They can be seized on the road or street immediately adjoining the premises and cattle driven off by the tenant in view of the landlord may be seized on the highway. Also the parties may agree that distress may be made elsewhere than upon the premises.

(e) Fraudulent Removal.

Goods fraudulently removed off the premises by the tenant, i.e. secretly removed with the intention of putting them out of the reach of the landlord when rent is falling due or is in arrear, may at any time within thirty days after such fraudulent removal be seized by the landlord wherever they may be found unless they have in the meantime been sold to some person purchasing them without any knowledge of the landlord's right. No goods of strangers removed from the premises may be so seized.

(f) Who May Distrain.

The person who may distrain the tenant's goods in case of non-payment of rent is the person who holds title to the premises leased and has a right to the rent payable at the time the rent is due. Where the land has been sold or the right to the rent assigned the purchaser or assignee may distrain. Notice of the purchase or assignment should always be given to the tenant. Until such notice is given he is entitled to pay the rent to the original landlord. Mortgagees may distrain for rent if it is so provided in the Mortgage.

(g) Whose and What Goods May be Distrained.

This is a question out of which immeasurable disputes may arise. It is advisable not to distrain the tenant's goods unreasonably but to give a warrant of Distress to a Bailiff who has had a long experience in making distresses and who knows what goods may be seized. Under the semi-moratorium now in force in Alberta no distress or other seizure may be made except by a Sheriff or his duly appointed Bailiff or deputies.

The general rule is that all the goods on the premises, including growing crops, cattle, etc., occupied by the tenant or a stranger are liable to seizure. The exceptions to this rule and exemptions from seizure are numerous and are as follows:

Goods not Seizable.

The following goods found on the leased premises cannot be distrained for rent:

(1) Goods in Actual Use.

The goods actually in use by the tenant and his family when the distress is being made, such as clothes being worn, implements or machines being used, horses being ridden.

(2) Perishable Goods.

Such as meat, milk, picked fruit or corn and all articles which cannot be restored in the condition they were in when seized.

(3) Tenant's Fixtures.

Fixtures not removable from the premises without injury thereto are exempt. Grain, fruit, hay, roots, whether still growing or separated from the soil can be distrained.

(4) Tools, etc.

Tools, implements of trade not in use unless there are not other sufficient tools on the premises, bedding and

wearing apparel and loose money but not money enclosed in a bag or box.

(5) Wild Animals.

Animals in a state of nature as rabbits, coons, foxes, etc.

(6) Goods of Other Persons.

Goods which are on the premises but belong to other persons (not related to the tenant) are not seizable, but the fact that other persons have an interest of the kind mentioned below (see paragraph on goods seizable) does not make the goods exempt. The owners of the goods must notify in writing, the landlord that their own goods do not belong to the tenant and offer to pay the landlord the amount, if any, due by them to the tenant for the lodging. Goods of another delivered to the tenant in the way of trade, i.e., such as machinery to be repaired, horses to be shod, etc., are exempt.

Cattle of another straying on the tenant's premises are exempt.

Goods Seizable.

Goods in possession of the tenant in which others claim certain interests are not exempt from seizure under a distress for rent. The following goods claimed by persons other than the tenant but in the tenant's possession may be seized under distress.

Alberta Saskatchewan and Manitoba.

Goods claimed by persons holding an execution against the tenant or goods claimed by persons to whom they have been sold, mortgaged, given as a gift or assigned, which includes goods claimed by persons who hold a bill of sale, chattel mortgage, agreement of sale or lien note in respect of such goods, or as assignee for the benefit of creditors of the tenant.

Goods of another exchanged by the tenant for his own goods.

Goods claimed by the wife, husband, daughter, son, daughter-in-law, son-in-law or other relative of the tenant living on the premises as members of the tenant's family or persons to whom such relatives have sold, mortgaged or given the goods.

British Columbia.

Where goods of the tenant are held by him under a bill of sale, agreement of sale, or lien note, the interest only of the tenant in such goods may be sold by the landlord for rent.

When mortgagees distrain under a power to do so in the mortgage they may not seize any goods exempt from seizure under execution. (See chapter on Exemptions).

How Much Rent.

No more than six months' arrears of rent may be distrained for.

How Distress Made.

As stated above the landlord unless he has had experience should in all cases employ a bailiff with experience to make the distress; for that purpose he must execute under seal a warrant which he gives to the bailiff as his authority to make seizure.

Entry.

Entry on the premises to make the distress must be made sometime between sunrise and sunset through some ordinary and natural means of entry upon the premises, such as through a gate, door or an open window. It is unlawful to break open the doors or open windows in order to enter. A fence may also be climbed. Force may only be used where the bailiff has obtained a lawful entry and has been refused re-admittance. When the tenant has fraudulently removed the goods from the premises,

windows and doors, etc., may be broken open in order to gain admittance to the place where the goods are.

Seizure, Valuation and Sale.

The bailiff is required to make a list or inventory of the goods seized and serve the tenant with written notice of such sale after goods seized. Within five days from the service of the notice if the tenant considers the seizure illegal or unjustifiable he should at once consult a solicitor in order that the goods may be immediately replevied within such five days. The bailiff after having the goods valued by two valuers sworn before a J.P. to value the goods may sell them at auction for the best price obtainable. In Alberta, under the semi-moratorium Act now in force, an order from the Court must be obtained before the goods seized may be legally sold.

Replevin.

This is an action brought by the tenant claiming that the goods have been wrongfully and illegally seized and should be re-delivered to him. Upon the tenant giving security for the rent claimed as due the goods are re-delivered to him and the Court then proceeds to try the question as to the claims of the landlord. Such replevin action must be commenced at once so that the goods may be re-delivered to the tenant before the sale.

Costs.

In each province there is provided a special tariff of fees which bailiffs may charge for seizure under distress. If the bailiff claims any fees over and above the legal fee he is liable to repay three times the amount he has so illegally claimed.

When Distress Should be Suspended.

No distress should be made if the tenant tenders before it is made the full amount of rent due in legal tender (see chapter on Banks and Banking) or, if after the distress is made the tenant tenders the amount due and costs incurred, the distress or sale should not be proceeded with.

If the landlord accepts a promissory note for the rent he cannot continue the distress.

Illegal or Wrongful Distress.

An illegal distress occurs whenever distress is made where there is no rent due, or when an improper manner of seizing the goods or entering upon the tenant's premises is employed.

The tenant's remedy in the above case is to have a replevin action immediately commenced and receive back the goods upon giving the required security. Where no rent was due the tenant is entitled to recover from the landlord for the alleged distress double the amount of the goods distrained and sold, and in any case damages covering all loss he has sustained.

Irregular Distress.

This occurs when the bailiff seizing commits some irregularity in the course of the valuation and sale. For this the tenant is entitled to sue the landlord for any damages he has suffered thereby.

Assignment of Lease.

A lease is assigned or transferred by an instrument in writing called a transfer of lease, which is executed by the lessee and if the lease was originally for more than three years such transfer is registered on the certificate of title of the land leased.

Purchase of Land Leased.

The purchaser from a landlord of the premises leased takes the land subject to that lease. If the lease is for a period shorter than three years the tenant must be in occupation, otherwise the purchaser is not required to recognize the lease. The purchaser from the landlord becomes entitled to all the landlord's rights against the tenant in respect of all covenants or promises entered into by the former landlord except those of a purely personal character. The purchaser of the premises or one who merely has

the rents assigned to him, should at once give notice of the purchase or assignment to the tenant, for the tenant is not bound to pay rent to him until he receives such notice.

Liabilities of Transferee.

The transferee or assignee of the lease becomes tenant to the original landlord and is liable to pay rent to him and to perform all the covenants entered into by the former tenant who transferred the lease to him, which concern the use of the premises leased, but he is not responsible for or liable to perform covenants of a purely personal character entered into by the former tenant. But covenants by the original tenant affecting the land leased, such as to pay rent, taxes, to repair, to build, to insure, and any restrictions of which the assignee has notice are binding upon such assignee of the lease. The transferee is however only liable for rent and to repair and other covenants between the time he has the lease transferred to him and when the time when it runs out or he transfers the lease to another. The original tenant continues liable to pay rent and do all covenants in addition to the transferee being also liable.

LIEN NOTES AND CONDITIONAL SALES OF GOODS.

A PERSON who intends purchasing goods and chattels is enabled to learn from the registration of Bills of Sale and Chattel Mortgages as required by the Bills of Sale Act whether the goods to be purchased have been sold or mortgaged already to another person. (See Chapter, Chattel Mortgages and Bills of Sale). If there has been no registration of a Bill of Sale or Chattel Mortgage and he has no knowledge of any prior sale he obtains a good title.

It frequently happens, on the other hand, that persons who have agreed to buy goods and who have obtained possession of them have no title or ownership of them until the purchase price is paid in full, having agreed with the vendor or seller that he shall retain title until the goods are paid for. In such cases in order to protect persons who purchase such goods from the persons who do not own them and cannot give any title to them until they are paid for in full, the conditional sales (Lien Notes) Acts have been passed. The law as to such lien notes differs considerably in the four Western Provinces. Such differences are shown under the following headings:

Registration of Lien Notes.

Alberta.

On every sale of goods of value of \$15.00 or over where the condition is that the title and ownership remain in the seller and the purchaser shall obtain the physical possession of the goods only, and it is also intended that such title and ownership should pass to the purchaser as soon as the purchase money is paid or other conditions complied with, there must be a Lien Note signed by the purchaser or his agent and containing such a description of the goods that they may be easily known and identified, and the note must be accompanied by an affidavit of the seller stating that the Lien Note annexed sets forth the agreement entered into by the parties and is in good faith and not for

the purpose of protecting the goods mentioned therein against the purchaser's creditors.

Registration.

The original or a true copy must be registered in the office of the Registration Clerk for Chattel Mortgages in the Registration District where the buyer resides within thirty days of the delivery of the goods to the buyer.

Delivery in Another District.

If goods are delivered in another district than that in which the buyer resides, registration of a copy of the Lien Note must also be made in the clerk's office of the registration district where such goods are delivered.

Removal of Goods.

Where goods are removed into another registration district by the purchaser, a Lien Note must be registered in the clerk's office of the registration district to which the goods are removed.

Renewal of Notes.

Within thirty days of the expiration of two years after the first registration and each year thereafter the registration must be renewed by the filing of a statement of the amounts paid and remaining due upon the note, together with an affidavit that the said writing was not kept on foot to defeat, delay and prejudice the creditors of the purchaser.

If a Lien Note is not made and registered as required by the Act the goods sold will not be protected against the buyer's creditors. These provisions do not apply to goods sold by joint stock companies to Railway Companies.

Lien Notes are not negotiable or transferable instruments such as promissory notes, bills, etc.

Saskatchewan.

This province has exactly the same requirements with respect to making and registration of Lien Notes as in Alberta with the following additional provisions.

Registration Not Necessary.

Registration of Lien Notes is not necessary in Saskatchewan where there is a sale of manufactured goods of the value of \$15.00 or over which at the time of delivery to the buyer have the manufacturer's or vendor's name painted, printed or stamped on the goods or plainly attached thereto by a plate or similar device, and if the manufacturer or seller keeps an office in the province where information may be obtained concerning such sale of goods any person applying for such information may apply in person or by letter, giving his name and Post Office address, to which a reply may be sent, after which the manufacturer shall furnish by registered letter the information required within five days after the receipt of such request.

Manitoba.

No making or registration of any Lien Note is required upon conditional sales of goods, but upon the sale of any manufactured goods of any value, where after delivery of goods to buyer, title remains with seller, the manufacturer's name or some other distinguishing name must be painted, printed or stamped on the goods or otherwise plainly attached thereto, and the agreement for the sale of such goods must be in writing signed by the buyer or receiver of such goods, otherwise such goods will not be protected against the buyer's creditors. The manufacturer of such goods must supply under penalty all information respecting the balance on the goods and the terms of payment. As to all other goods such as live stock, grain, etc., no making or registration of Lien Notes is required.

British Columbia.

Provisions as to making and registration of Lien Notes are the same as in Alberta, except that Lien Notes must be given on a sale of goods of any value and registered within twenty-one days of the delivery of the goods. Registration is effected in offices where Chattel Mortgages, etc. are registered. Renewals are not required. A copy of the note must be left with the purchaser within twenty days of the delivery of the goods. Manufacturers

of goods shall upon request in person or in writing, when the address of applicant is given, supply under penalty within five days by registered letter any information required as to the amount due on such goods and terms of payment.

Receipts. (Alberta and Saskatchewan).

Upon payment or tender by the buyer to the seller of the amount due on the goods covered by the Lien Note or upon due performance of any condition required, the seller shall give the buyer a receipt stating that his claims against the goods are satisfied, such receipt giving the buyer a clear title to the goods. This receipt may be registered.

Retaking Possession. (Alberta, Saskatchewan and British Columbia).

If the seller retakes possession of the goods for breach of any of the conditions in the Lien Note, he must hold them for at least 20 days during which time the purchaser or any one claiming through him may redeem the goods upon payment of the amount due thereon with interest and charges of retaking possession.

Sale and Notice of Sale. (Alberta, Saskatchewan and British Columbia).

If the person retaking possession resells the goods he must first give five days notice of sale in Alberta and British Columbia, eight days in Saskatchewan, in writing. Such notice may be personally served on the buyer or in the absence of the buyer or his successor in interest be left at his last known place of residence in the province or may be sent by registered letter deposited in the Post Office at least seven days in Alberta and British Columbia, and ten days in Saskatchewan before the sale addressed to buyer at his last known address in Canada. The time mentioned in these notices may be part of the twenty days above mentioned required for the retention of the goods. No sale may now be had in Alberta except under an order of the Court, and the repossession must be taken through the sheriff or his authorized bailiff.

Small fees are charged by the clerks for registration (about 50c.). The clerk may also administer the affidavit required to be filed with the Lien Notes.

LIFE AND ACCIDENT INSURANCE, ETC.

Definition of Life Insurance.

A LIFE insurance policy is a contract whereby an Insurance Company agrees to pay at the death of the person insured or either at death or at a certain time whichever happens first a sum of money in consideration of the person insured paying a yearly sum of money to the company called the premium.

Who May Insure.

Any person who may contract may enter into a contract of Life Insurance upon his own life or that of another in whose life he has an insurable interest.

Who May Insure the Life of Another.

Any person who has what is called an insurable interest, that is, some pecuniary i.e., money interest, in the life of some one else may effect an insurance on that person's life. According to this rule the following persons may effect insurance.

Husbands and wives may effect insurance on the lives of one another, creditors on lives of debtors, employers on lives of employees, persons other than parents maintaining children and expecting children to pay back such insurance on lives of such children, partners on lives of fellow partners. See chapter on Husband and Wife for law as to protection of insurance moneys against creditors of the insured.

Amount Recoverable.

Where a person effects insurance on his own life the total amount of insurance is recoverable whenever it falls due. Whenever, however, any person effects insurance on the life of another in whom he has some insurable interest, the amount recoverable is limited to the extent of the money interest in the person insured at the time the insurance was taken out.

Agents.

Agents may not of themselves unless empowered so to do, which is rarely the case, bind the company by a con-

tract to grant policies. Their duty is to write the application, take the premium and forward the same to Head Office and only when Head Office accepts the risk and grants the policy is the Company bound.

Concealment of Facts.

The contract of insurance is entered into upon the condition that the Company is to be informed about everything concerning the life, health, conditions of life, etc., of the person whose life is insured, which it is important to the company that it should know and all questions asked at the medical examination and upon the application must be answered to the best of the knowledge of the person whose life is insured. Any misstatement or concealment of any fact the company wants to know made falsely by the person to be insured makes the policy void, and right up to the time the policy is issued the company should be informed respecting any events happening after the medical examination, such as sickness or accidents or the discovery of a disease the applicant did not know he had when being examined.

When Policy Commences to Run.

The company becomes liable as soon as the policy is issued. The premium must previously be paid by note or otherwise. If it is so provided in the policy the company does not commence to become liable until the premium is paid in cash.

Cancellation of Policy.

The policy will expire in the following events, viz:

(a) If premiums are unpaid when due unless the company gives an extension of time.

(b) On the discovery of false statements in the answer to the questions put on application.

(c) Where the person commits suicide, but not where he commits suicide while insane, or where the person insured is executed.

Rates and Premiums.

If the company refuses to effect insurance, the premium paid may be claimed by the person who paid it unless the note is carried for any length of time or the insurance was refused or became void by reason of false statements and the premium was paid on that condition.

Assignment of Policy.

An insurance policy may be assigned by the person insured to any other person whether such assignee has or has not an insurable interest. Notice in writing should accordingly be given to the Insurance Company, but the company's consent is not necessary unless otherwise provided. The assignee of the policy may sue in his own name for the insurance moneys when these become due.

Agents Giving Rebates.

No rebates are to be allowed on premiums. That means an agent may not share his commission with the person taking on the insurance, such person paying thereby less than the full amount of the first premium. Very heavy penalties are payable by persons accepting or giving such rebates.

Days of Grace.

Thirty days of grace must be allowed in the payment of premiums, after the day the premium is due.

5 Year Periods.

Profits must be apportioned to policies at least once in every five years above mentioned.

Payment of Claims.

The insurance moneys become due in the following events:

(a) Death of the person insured. Person insured must be proved to have died. If such person is absent for seven years without being heard of, the law presumes him dead. Notice of death should immediately be sent to the company.

(b) By the time or event having passed when the money is payable. Policies for certain periods provide for a certain cash payment and profits at the end of a certain period such as 10, 15, 20, 25 years, etc.

(c) If the company fails for 60 days to pay a claim it does not dispute or fails to pay a judgment recovered in respect of claim.

Accident.

This is a class of insurance similar to both life and fire insurance. It is undertaken both by life and other insurance companies. It provides an indemnity to persons insured by the company in case of disablement or sickness resulting in incapacity to work, or in case of death resulting from accident or sickness. The law respecting life insurance applies to this species of insurance. Every question asked by the insuring company respecting the health physical condition, work engaged in, etc., of the person insured must be answered to the best of such person's knowledge and belief. Any false statement or withholding of any information relating to matters of which the company requires knowledge voids the policy.

When Indemnity Payable.

The indemnity is payable whenever the event occurs for which the policy provides an indemnity. In the case of a policy covering disablement or death due to accident the indemnity may be recovered whenever there has been an accident as provided in the policy and the disablement or death has resulted directly from that accident. Where the person injured has a right of damages against some person who caused the injuries he may probably recover both his accident insurance and damages from such other person as well. The accident must be something with which the person injured had nothing to do and must be something unlooked for and not expected or designed. In policies providing indemnity against illness the indemnity is payable whenever the person injured suffers loss of time through contracting any of the illnesses mentioned in the policy. The conditions of the policy should be care-

fully examined, especially those relating to sending in notice of accident to the company. Prompt compliance with such conditions is essential.

Guarantee Insurance.

This is a class of insurance in which the company insures the honesty of some servant or employee or the continued solvency of some debtor. When a servant is dishonest the company must be informed by the person for whose benefit the insurance is effected usually the master or employer. The company must be informed of all facts relating to the servant's reputation for honesty before the policy is issued or, if not known before, after it is issued. If such facts are withheld and the servant continues in the employment without the consent of the company, the policy is void. The indemnity is payable when the employer suffers loss through the dishonesty of the servant whose honesty is insured. In the case of a guarantee of a debtor the same principles apply as in the case of bonds and guarantees. (See chapter on Bonds.)

Employer's Liability Insurance.

This is a class of insurance whereby employers insure themselves against loss owing to their liability to servants either under the Workmen's Compensation Act or their ordinary liability at common law, in case of accident to the servant while in the employ of the master (see chapter on Master and Servant). Where such employer becomes insolvent any insurance he holds of this character passes to the assignee for the benefit of the workmen employed by him.

LIMITATIONS OF ACTIONS

IN the case of nearly all claims for which an action can be brought the action must be begun within a certain time after the debt or liability becomes due. After such time has elapsed no action may be brought in respect of such debt or liability unless the running is suspended (see paragraph below: What prevents time running). The right to the payment of the debt or liability may continue but the Courts will not enforce it, the reason being that it is in the best interests of business and society that claims should be enforced promptly. A debt which cannot be enforced because of the lapse of such a time before the beginning of the action is said to be "outlawed" or "statute barred."

The law with respect to the time within which various actions must be brought is contained in statutes of the various provinces, copied almost word for word from some very old English statutes dealing with the matter, but where such laws differ in the various provinces the difference in time is mentioned.

Length of Time Within Which Actions May be Brought.

(a) Actions for Debt.

Actions for all debts on open accounts for goods or upon Promissory Notes, Bills (Drafts and Acceptances), or for money loaned must be brought within six years after the debt first became due. This includes all debts under verbal or written contracts not under Seal.

Actions for recovery of goods or for some trespass to lands or roads must be brought within six years of time liability was incurred.

Actions for moneys due under any contract under seal (see Contracts) must be brought within twenty years of the time when the moneys became due and payable.

(b) Actions Connected With Land.

Actions for rent or for interest on mortgages on land must be commenced within six years of the time the moneys become due.

Actions for the recovery of land or for the recovery of principal due on mortgages or an action by a mortgagor to recover land of which the mortgagor has taken possession must be brought within 12 years in Saskatchewan and Alberta, 10 years in Manitoba and 20 years in British Columbia from the time when the land might have been recovered or the mortgage principal sued for.

(c) Wrongs.

Actions for assault, battery or wounding of a person or for later imprisonment must be brought within four years after the wrong was committed.

Actions for libel or slander must be brought within two years after the utterance of the slander.

Actions for damage for negligence generally within six years after the event causing damage happened.

Actions in respect of injuries received by any person from the result of which he died must be brought within 12 months after death.

(d) Railways.

Actions against railways in respect of matters mentioned in the chapter on Railways must be commenced within one year after the right to bring the action arises.

When Time Commences to Run.

This question sometimes presents some difficulty but in cases of money debts no possible question can arise. The time commences to run only upon the day when the debt is due and payable and not before. For instance, the six year limitation period commences in case of an open account where no credit is given when the last goods are supplied or when credit is given when the period of credit expires. In case of a note or draft, upon the day following the last day of grace, in case of money loaned on the day it is to be repaid. In the case of rent or interest on mortgages the time commences to run when the rent or interest falls due. In the case of principal moneys payable on the mortgage, the time runs from the date the principal fell due. Where land or roads are to be recovered the time

runs from the day when the lands or roads could first be recovered. In the case of damages for injuries or other wrongs, the time runs from the time injury was caused.

What Prevents Time Running.

Time will commence to run as above described and continue to run until the time has elapsed within which the action may be brought unless the debtor does one or two of the following acts, viz:

(a) Makes a Part Payment on Account of the Debt.

In such case the time will only commence to run from the time the last of such part payments was made. Where the debtor specifically applies the part payment to the particular debt, it makes no difference whether the part payment is made before or after the six years or other period has elapsed, it nevertheless revives the debt, the time commencing to run in respect of the balance from the time of such payment.

Such payment will not revive the debt if the debtor in paying it denies there is any balance due. Where there are two debts payment in respect of one debt does not prevent time running in respect of the other. Where there are two co-debtors such as two persons on a note part payment by one does not prevent time running against others. When an account is made up of debts and credits the time commences to run from the date of the last payment. The part payment may be either in goods or money.

(b) Where the Debtor Acknowledges the Debt in Writing.

In this case the time commences to run when the written acknowledgement is given. The written acknowledgement must be clear, certain and unconditional, and must be made by the debtor or his agent to the creditor or his agent and to no one else in order to have any effect.

LIVE STOCK LAWS

Domestic Animals.

Trespassing and Running at Large.

IT is impossible within the limits of this book to set out the law in the various provinces relating to this subject. The rules differ when the animals trespass or are at large in a village, rural municipality, local improvement district or unorganized territory. Such rules could not be condensed and would, to be of any use, be required to be set out in full. For precise information with respect to this subject the reader should consult a solicitor.

Registration of Stallions.

Alberta.

(1) Registration.

Every person travelling a stallion for hire must have the name, description and pedigree of the stallion enrolled in the Department of Agriculture, Edmonton. Such certificate is issued by the Department upon application and payment of the prescribed fee. On every sale of the stallion the certificate must be sent to the Department for a transfer of same to the purchaser of the stallion.

(2) Posting Certificate.

Copies of the certificate must be posted up by the owner of the stallion in conspicuous places on the inside and outside of the main door leading into the barn or building where the stallion stands for service.

(3) Service Advertisement.

When the stallion is advertised for service the poster or bill offering the stallion for service must contain a copy of the certificate issued by the Department.

(4) Penalty for Not Registering.

There is a penalty of \$25 for any owner of a stallion failing to register same.

(5) Lien for Service.

Owners of stallions upon filing a lien in the office of the Registration district for chattel mortgages in which

the mare served is kept for the service may, if the service fee is not paid before the 1st of January, after the colt is born take possession of such colt before May 1st following, wherever it may be found and after giving the owner due notice sell the colt by public auction. The balance of the proceeds of the sale after deducting cost of sale and service fees is payable to the owner of the colt.

In Manitoba and Saskatchewan.

Practically the same laws as those in force in Alberta apply. The certificate issued by the Department of Agriculture for Manitoba must be renewed each year. In Saskatchewan deaths of stallions must be reported to the Department of Agriculture.

Brands. (Alberta and Saskatchewan).

(a) A Brand means any letter, sign, numeral or combination used to mark and distinguish stock including horses, mules or cattle.

(b) A Vent Brand is a similar marking in a position immediately below the brand forming part or a whole of the brand or such a marking showing the stock to have passed from the owner to some other person.

(c) Brands for cattle for the hip, thigh, rib, shoulder or top of arm must consist of three characters, the design of which is to be fixed by the Minister of Agriculture. Brands must not conflict with any other brands granted. A brand of less than three characters may be allotted on payment of an extra fee of 50c if there is no conflict.

(a) Continuation and Cancellation, Alberta.

All brands allotted remain the property of the registered owner provided the said owner pays to the Recorder of Brands the fee for the continuation of the brand.

The said continuation fee is due and payable upon brands as follows:

On brands allotted prior to January 1st, 1907, upon December 31st, 1915, and upon the 31st day of December of every successive four year period.

On brands allotted during the years 1910, 1911 and 1912, upon December 31st, 1917, and upon December 31st of every successive four year period.

On brands allotted during the years 1913 and 1914, upon December 31st, 1918, and upon the 31st day of December of every successive four year period.

And upon brands allotted subsequent to the 31st day of December in the year 1914, upon the 31st day of December in every successive four year period after such allotment.

In any case where the owner of a brand does not pay the required fee at the required time, the Recorder of Brands shall forthwith notify him of such failure and that he shall cease to be the owner of the brand unless the fee due by him is paid before the 31st day of the following month of March; and if the owner fails to pay the required fee by the said 31st day of March he shall cease to be the owner of the brand.

In case any owner forfeits his right to ownership of a brand, the said brand shall not be allotted to any other person for a period of at least four years.

In Saskatchewan brands expire as follows:

(a) Brands allotted during years 1907, 1908, 1909, on December 31st, 1916.

(b) Brands allotted during years 1910, 1911, 1912, on December 31st, 1917.

(c) Brands allotted during years 1913, 1914 on December 31st, 1918.

(d) Brands allotted after December 31st, 1914, on December 31st of 4th year following allotment of brand.

(b) **Renewal.**

Brands may be renewed before cancellation and within three months after cancellation may be re-allotted for a further period of four years upon application by the owner of the brand but unless application for re-allotment is made within three months after cancellation (Saskatchewan 5 months) no re-allotment may be made for one year after such cancellation.

(c) Same Brands.

Where by mistake two or more owners of cattle have the same or conflicting brands, the later brand is cancelled and a new one allotted. The recorder of brands notifies, before cancellation, the holders of brands which expire during the year.

(d) Recorder of Brands.

The official appointed by the Government to have charge of recording etc. of brands is called the Recorder of Brands. Letters and applications to him should be addressed to The Recorder of Brands at the Government buildings in Regina for Saskatchewan, or at his office in Medicine Hat for Alberta. Searches as to brands may be made at the recorder's office on payment of the required fee.

(a) Application for Brands.

Any person requiring a brand or a renewal or re-allotment of brand already allotted must apply to the Recorder of Brands, enclosing the proper fee. A certificate is thereupon granted entitling the holder to the exclusive use of the brand until its cancellation or transfer. The mark of such brand upon cattle, unless otherwise shown, is evidence that the cattle belong to the holder of the brand.

(b) Change of Brand.

The brand may at any time be changed upon application accompanied by the necessary fee.

(c) Transfer of Brands.

The holder of any brand wishing to transfer it must forward to the recorder of brands a duly executed transfer of the brand.

Where the holder of the brand dies before the transfer is signed and recorded the person to whom the brand was transferred before the death of the holder must make a declaration in the form, and publish notice of the transfer, required by the Minister.

(d) Transferring Stock.

When stock are sold and transferred from a holder of a brand to another the holder's vent brand must be marked on the stock unless the brand itself has been transferred to the purchaser of the cattle. If the purchaser of the stock consents he may accept instead, a statement signed by the seller that certain specified cattle, marked with a brand of which the recorded number and a description are given, have been sold.

(e) Drovers of Stock. (Applies to Alberta only).

Where stock is being driven from one point of the province to another, distant 20 miles or more, from the drover's home or to some point outside of the province but not where cattle are being driven to and from a place of shipment close to place where stock are being kept, the drover of such stock must hold the certificates of the brand of the stock driven or a declaration from the holder of the brand of the cattle driven showing the number and class of stock removed and the recorded brands. Where a purchaser of stock is driving stock from one part of the province to another or to a point outside the province, where the stock are not marked with his brand, he must obtain a bill of sale (see chapter on Bills of Sale) showing the number and class of the stock and the recorded brands of each. Wherever the stock is inspected the person in charge of same can only show his right to the stock by the production of such brand certificate, declaration, or bill of sale mentioned.

(f) Penalties.

Any person who brands, directs, aids or assists to brand stock with a brand cancelled or not recorded or who brands, etc., with his own or any other brand, stock not his own or who defaces or makes illegible any brand or who does not comply with the requirements respecting driving cattle, mentioned above (in Alberta), is liable to a fine of \$200 and costs.

Manitoba.

The provisions here are practically the same as in Alberta and Saskatchewan.

(a) Application.

Applicant for brands transmits to Minister of Agriculture an application with fee of \$1.

(b) Transfers.

Brands are transferred by an assignment which, upon execution, is forwarded to the Minister.

British Columbia.

(1) Application for Certificate.

Application for brand is made to the Recorder of Brands, setting out a description of the brand, the shape, size and position on the animal of the mark or brand and such other matters as the Minister may require. No brand will be allotted permitting the cutting off of both ears of an animal.

(2) Brands on Same Part of Same Animal.

No two persons may use or no two records shall be made of the same brand in the same district. If such occurs the Justice of the Peace of the district will order one of the persons to obtain a new brand or to select a different part of the animal on which to place the brand. Neglect to comply with such order renders the person so neglecting liable to a fine of \$50.

(3) Defacing Old Brand.

Anyone placing a new brand over or so close to an old one as to deface it is liable to a fine of \$100.

(4) Other Penalties.

Persons guilty of offences similar to those mentioned under Alberta and Saskatchewan are liable to a fine of \$200.

(5) Cattle Not Marked.

Persons owning cattle not marked or whose brand is not recorded must within 90 days of becoming owner of the cattle transmit to the Recorder of Brands a transcript of the brand and marks he wishes to record. Neglect to comply renders any person so neglecting liable to a fine of \$50.

(6) Transfer.

Same as other provinces.

Protection of Sheep and Other Animals from Dogs

Alberta and Saskatchewan.

(1) Killing Dog.

Any dog worrying or destroying cattle, horses, sheep, pigs or poultry elsewhere than on the land of the owner of the dog may be killed.

(2) Proceedings Against Owner.

An information may be laid before any Justice that any person owns a dog which has within three months thereof worried, injured or destroyed any cattle, horses, sheep, pigs or poultry elsewhere than upon the land of the owner of the dog and upon the Justice hearing the matter he may order the dog to be killed and inflict a fine on the owner.

Manitoba.

Where it is made to appear to a Justice that a dog is in the habit of worrying travellers, ridden or harnessed horses, or oxen or sheep, by pursuing or biting and worrying them, etc., elsewhere than on the land of the owner of the dog, such Justice may order the animal shot. If the owner does not carry out such order he is liable to a fine.

British Columbia.

Killing Dogs.

Anyone seeing a dog worrying any domestic animal elsewhere than on the land of the owner of the dog may kill such dog.

Proceedings Against Owner.

Similar proceedings as above mentioned may be taken before a Justice or Magistrate against the owner of any dog which within six months previous to the **laid** complaint, worried, killed or destroyed any sheep or lamb or has bitten or attempted to bite any person. After hearing the matter the Justice may order the animal to be killed.

Estray Animals

Alberta and Saskatchewan.

Owner of Estray, Known to Finder.

Any person who finds he has on his premises or in his band, herd or flock any estray animal (other than a stallion or bull) the owner of which is known to him, which cannot be driven away from such premises, band, herd or flock shall at once notify such owner through the mail and such owner within ten days after being so notified shall remove his animal from such premises, band, herd or flock.

Owner of Estray Unknown to Finder.

Any person who finds he has on his premises or in his band, herd or flock any estray animal (other than a stallion or bull) the owner of which is unknown to him, which cannot be driven away from the premises, band, herd or flock, or if any such animal the owner of which is known to him is not removed from the said premises, band, herd or flock within ten days after such owner has been notified as provided in the paragraph next preceding shall at once notify the brand reader who shall prepare a notice to the effect that such animal is on the finder's premises or in his band, herd or flock (as the case may be) which notice shall contain the name, location and post office address of the finder and a full description of the animal with all its marks (natural or artificial) colour and probable age with any remarks which may lead to its identification and forward such notice to the department and to the recorder of brands, and such notice shall be published for two consecutive issues in the supplement of the official gazette, and a copy of each issue containing such notice shall be forwarded to every post office, to every post of the North-West Mounted Police, to every justice of the peace and to every newspaper in the province, and a copy of the same shall be forwarded with every copy of the said gazette.

In addition to the notice forwarded for insertion in the said gazette the finder of any such animal as is described in the paragraph preceding shall cause a copy of the notice

(as prepared by the brand reader) to be inserted in three successive weekly issues of the nearest newspaper and any expenditure (not exceeding the sum of \$1.50) made for such advertising shall be reimbursed to the finder by the owner when the animal is claimed; or, if not claimed, by the justice after the sale of such animal, upon proof of such expenditure having been made.

Appointment of Brand Readers.

The Minister of Agriculture appoints as brand readers such competent persons as may be necessary to give an accurate description of any estray and such brand reader is entitled in each case to a fee of \$2 and mileage, which shall be paid to him by the finder, who shall be reimbursed by the owner when the animal is claimed, or, if not claimed by the justice out of the proceeds of the sale of such animal.

Recovery by Owner.

The owner of such estray is entitled to recover the same from any person in whose possession it may be upon tender of the amount of the expenses incurred up to the time of such tender from the day on which notice was given of the finding of the animal.

Such expenses shall consist of the sums prescribed by law and no other; and if it is made to appear in any proceedings taken for the recovery of any such estray animal that tender was made to the finder by or on behalf of the owner of the animal of the amount of the expenses to which the said finder is lawfully entitled and that such tender was refused, the finder shall thereby forfeit all claim to expenses in addition to any other penalty to which he may be liable.

Before delivering the animal to the person claiming to be the owner thereof the finder may require from him a statutory declaration stating that he is the owner of the said animal.

Fixing of Expenses.

In case the owner of such animal and the finder are unable to agree as to the amount of such expenses they

must forthwith proceed in the following manner: both parties at any time within three days shall appear before the nearest accessible justice to the place where the animal was found or such other justice as the parties may mutually agree to appear before and upon hearing the statements of the parties upon oath or otherwise as to the justice shall seem advisable such justice shall determine the amount of the expenses payable in the matter and such determination of the justice shall be final and conclusive between the parties.

Such justice is entitled to a fee of \$1 for determining such expenses which shall be paid by the party against whose contention the justice determines.

Sale of Animal in Default of Payment of Expenses.

In default of the payment of the expenses so determined and the justice's fee as aforesaid within a time to be stated by the justice, the justice shall sell or cause such animal to be sold by public auction either by the nearest accessible pound keeper or by any person authorized by him in writing to sell such animal and such justice out of the proceeds of such sale shall first pay the expenses of sale and advertising and justice's fees and then the cost of keeping (if any are allowed) to the finder and the balance to the owner (if known), otherwise to the Minister of Agriculture.

Payment Over to Owner.

Any money so paid to the Minister of Agriculture shall be paid over to the owner of the animal sold on evidence (satisfactory to the Minister or other officer appointed to examine into the same) being furnished and application therefor being made to the Minister within twelve months from the date of the sale otherwise such money shall form part of the general revenue fund.

Sale of Unclaimed Estray.

If such estray animal is not claimed within two months after the date of the first publication of the notice provided for above the finder (within sixty days there-

after) shall make application to a justice verified under oath before the said justice and the said justice may proceed to sell the animal and deal with the proceeds in the manner provided above.

Before proceeding to such sale the said justice shall examine the animal and the brands thereon (if any) and the notice in the official gazette provided for above; and if on such examination the justice is satisfied that such notice contains an accurate and sufficient description of the animal (and that the same has been sent as hereinbefore provided to the recorder of brands he shall proceed to sell the same; but if not satisfied the justice shall direct the finder to insert in the official gazette a notice containing an accurate and sufficient description of the animal and the finder shall not be entitled to receive any compensation for anything done prior to the mailing to the official gazette of the last mentioned notice.

Notice of Sale.

Before proceeding to sell an animal under this section the said justice shall eight days before the date fixed for the sale post in three conspicuous places a notice of such sale, giving particulars thereof, and no sale shall take place other than at a village, town or other well known public place and one of the notices shall be posted in the post office of the place of sale, and if this is not the nearest post office to the place on which the animal is detained a fourth notice shall be posted at the nearest post office thereto.

At the time and place appointed for the sale of any estray animal the finder shall attend with such animal and shall with the animal present a statement of the fees for keeping and expenses incurred in connection with such animal to the justice or other person authorized by the justice to offer the animal for sale.

Fees.

The following and no other shall be the fees payable.

To the finder:

For advertising in a newspaper the amount actually expended not exceeding \$1.50;

For mileage to and from place of sale ten cents per mile each mile necessarily travelled but not exceeding thirty miles;

For the care and sustenance of every head of swine, ten cents per day from the date of mailing of notice to the owner or to the official gazette;

For the care and sustenance of any horse or head of cattle in the district lying to the north of Township 28 of the Dominion Land Survey during the period from the fifteenth day of November to the fifteenth day of April, fifteen cents per day from the date of mailing the notice to the owner or to the official gazette but not exceeding in all the sum of \$9; and in the district to the south of Township 29 of the Dominion Land Survey for the care and sustenance of any head of cattle during the said period, five cents per day from the date of mailing the notice to the owner or to the official gazette but not exceeding in all the sum of \$3.

To the Justice:

For preparing and posting notices of sale \$1;

For preparing application and administering oath \$1;

For postage and exchange or commission on transmission of proceeds of sale the amount actually expended.

To the Salesman:

Two and one-half per centum of the amount realized by the sale.

To the Brand Reader:

For postage, the amount actually and necessarily expended;

For preparing and forwarding notice to the department and recorder of brands, \$2;

For mileage, 10 cents per mile necessarily travelled over 10 miles, but not to exceed 30 miles.

Offences and Penalties.

If any person commit any of the next following offences he is liable to a penalty not exceeding \$100.

1. Takes, rides or drives off any horse or head of cattle belonging to another without the owner's consent.

2. When taking his own animal from pasture, without the owner's consent takes or drives off the animal of any other person grazing with his own.

3. Causes or allows any horse or head of cattle belonging to another party (without the consent of such party) to be driven with his band or herd more than five miles from its grazing place;

Provided that if the owner of any animal in taking it from pasture finds it necessary to drive other animals a greater distance than five miles before he can separate his own animal from among them he shall not be liable to the penalties imposed by this section if he at once drives back such animals to the place from which he drove them.

4. Demands or receives any sum for keep of any animals or any fee or charge not authorized by the Ordinance.

5. Neglects to provide sustenance for any estray animal while such animal is to his knowledge upon his premises or in his band, herd or flock.

6. Rescues, incites or attempts to rescue any animal without payment of the fees due for keep and other expenses incurred by the finder on account of such animal.

7. Rides, drives or otherwise works or uses for his own pleasure or benefit any estray horse or ox captured or detained under any of the provisions of the Ordinance.

8. Neglects to promptly notify the owner (if such owner is known) or if such owner after due notification does not take away his animal or (if such owner is not known) neglects to forward the notice provided for in section 4 of the Ordinance to the department on finding an estray animal on his premises or in his band, herd or flock.

9. Being the finder purchases in person or by his agent or has any interest of any kind in any animal sold under the provisions of the Ordinance.

The owner of any horse who neglects to remove the same from the premises where it has been found within fifteen days after he has been notified under the provisions of section 3 hereof shall be liable to a penalty of \$1 for each day during which such neglect continues after the expiration of the said fifteen days.

Nothing in the preceding paragraph prevents the owner of any animal taken, ridden or driven off, improperly treated or worked as aforesaid, bringing a civil action for damages in addition to any penalty imposed thereunder.

Nothing in the law relating to estray animals impairs the rights, powers or procedure respecting the seizure, driving, impounding or selling animals running at large or doing damage.

Manitoba.

In this province the law as to estray animals is substantially the same as in Alberta and Saskatchewan. The Manitoba Act respecting estrays is in force only in unorganized and disorganized districts.

Pound Districts

Alberta and Saskatchewan.

Organization of Districts.

The Lieutenant-Governor-in-Council may by order made by notice in the official gazette constitute any part of the province not within the limits of a municipality or a village into a pound district.

Before constituting any pound district a notice of intention to do so is published in the official gazette and posted in at least one post office within such proposed pound district or if there be no post office within such district then in the post office nearest thereto at least 30 days prior to making such recommendation.

Such notice is addressed to the postmaster at such post office inclosed in a registered cover.

Objection to Organization.

If at any time within 30 days after such notice is posted objection is made by a majority of the proprietors of land within such proposed district (the facts stated in such objection and the signatures thereto being verified by a statutory declaration) the proposed district is not constituted; but if no such objection is made within 30 days from the posting of the notice the proposed district may be constituted as hereinbefore provided.

Altering Districts.

The Lieutenant-Governor-in-Council may by order made public by notice in the official gazette vary or alter the boundaries of or add to or take from existing pound districts or abolish or discontinue the same.

Estrays in Pound Districts.

No animal declared under the provisions of the Pound District Ordinance to be an estray in any pound district is permitted to run at large therein and any such animal when not under control of its owner is liable to be impounded.

Upon being satisfied as to the desire of a majority of the proprietors of land in any pound district legally constituted the Minister of Agriculture may by notice published in the official gazette and in any other manner that may seem to him necessary declare that any bull otherwise prohibited from running at large shall be counted an estray or not an estray at any season of the year.

On application of the council of any municipality or the overseer of any village on behalf of the residents of such village within the limits of which municipality or village a pound district has been constituted, the Minister may declare any animal to be an estray or not an estray at any season of the year within the limits of such pound district.

Capture of Estrays.

The proprietor of any land in any pound district may capture any estray found within such pound district and drive such estray to and deliver the same at the nearest ac-

cessible pound in the said pound district whether the owner be known to the captor or not and it may be dealt with in every way as a trespasser may be dealt with under the Pound District Ordinance.

Stallions or Bulls at Large.

No procedure under The Entire Animals Law shall be taken with respect to stallions or bulls running at large in any pound district but (if captured) all such stallions or bulls shall be forthwith driven to the nearest accessible pound in such pound district there to be dealt with as trespassers may be dealt with under the Ordinance.

Trespassing Animals.

The proprietor of any land surrounded by a lawful fence, in a pound district, upon which land any animal is found trespassing may seize and distrain the same and drive the same to the nearest accessible pound and deliver such trespasser to the pound keeper to be impounded and shall at the same time deliver a written statement describing the animal impounded, the name of the owner (if known) the place where such animal was trespassing, the amount of damages claimed; and the said pound keeper then impounds such trespasser and is responsible for the feed and safe keeping thereof so long as he is legally bound to hold the same; and is empowered to collect expenses before delivering up the same to its owner.

Any person acting as inspector, constable or overseer in any municipality or village or the appointee of any such person may take any action or proceedings authorized by law on behalf of any proprietor as if by him directed so to do.

Impounding in Unauthorized Pound.

Any proprietor who impounds any animal in any pound or place not authorized by law is guilty of an offence and liable to a penalty not exceeding \$20.

Any proprietor upon whose property any animal is found trespassing may (if he know its owner) temporarily

impound the same in any convenient place for a period not exceeding three days and shall within twenty-four hours after such impounding deliver to such owner a written memorandum, similar to that mentioned in the preceding section, to be delivered to a pound keeper with any trespasser impounded in his pound; and shall feed and maintain such animal while so impounded; and may at the expiration of such time (if not sooner duly released) deliver it to the keeper of the nearest accessible pound; and such proprietor may make a charge for feeding and maintaining such animal and for sending notice not exceeding such as might by law be made by a pound keeper but is not entitled to any compensation for damage except for such as was done before the temporary impounding.

Damage to Inclosed Lands.

Where damage is done to the inclosed lands of any person in any pound district as the result of any animal breaking through or over the fence or fences inclosing the same such animal may be considered and treated as a trespasser if that part of the fence broken through or over by such animal is a lawful fence although other parts of the inclosing fence may not be lawful; and any animal breaking through or over a division fence in any pound district which its owner or person having charge of such animal is bound to repair and keep up shall be considered and treated as a trespasser although the said fence may not be a lawful fence.

In every case in which more proprietors than one hold lands inclosed by a common outward lawful fence such lands are deemed as against all persons outside such general fence to be lawfully fenced but as against each other where no lawful fence stands between them to be uninclosed lands.

Liability for Damages.

The person in charge of any animal within a pound district is liable for any damage caused by such animal under his charge as though it were his own property; and the owner of any animal allowed to run at large in any

pound district contrary to the provisions of the Pound District Ordinance is liable for any damage done by such animal although the land wherein such damage is done was not inclosed by a lawful fence.

Appointment of Pound Keepers.

In any pound district the Minister of Agriculture may appoint one or more pound keepers therefor and notice of every appointment shall be published in the official gazette describing the name and post office address of such pound keeper and the location of the pound.

Every appointment of a pound keeper terminates on December 31st in each year but all pound keepers so appointed may at the expiry of each year be eligible for re-appointment.

Any pound keeper may resign his appointment but no such resignation takes effect until his successor is appointed.

Duties of Pound Keepers.

Every pound keeper must keep a pound book in a form to be prescribed by the Minister of Agriculture from time to time and make all entries therein as soon after the doing of the several things required to be entered therein as possible and shall not make any entry after any dispute as to the subject matter of such entry shall have arisen; and the said pound book and a copy of the Pound District Ordinance which the pound keeper is required to keep must at all reasonable times be open to the inspection of any justice or member of the North-West Mounted Police force or any constable free of charge and of any other person upon the payment of ten cents; and every such pound book keeper shall grant extracts from his pound book to any person requiring the same upon payment of twenty-five cents for each extract not exceeding one hundred words and the sum of ten cents for every subsequent number of words not exceeding one hundred.

Every pound keeper on his removal from office or on his resignation must deliver the pound book to the person appointed to receive it.

Keeping Pound Clean.

Every pound keeper must at his own cost keep his pound clean and in good repair and supply the animals impounded therein with sufficient and wholesome food and water and the pound keeper may send such animals out of his pound at fit times and to fit places for grazing or watering and every pound keeper is responsible to the owner of any impounded animals for every loss or damage occasioned by any act of himself or his agent.

Payment of Charges on Impounded Animals.

All charges payable in respect of any impounded animal are payable in the first instance to the pound keeper, who holds the same subject to the provisions of the Pound District Ordinance for the person entitled thereto.

No charges or claim for damages done are payable to or recoverable by any person, in respect of the trespass of or damage done by any animal, who impounds or detains such animal for upwards of three days in any place not a legal pound.

Whenever any animal has been legally captured or distrained by any person for the purpose of impounding the same, if the owner of the animal or some person on his behalf pay or tender to the person seizing or having charge of such animal before the same has been actually impounded the charges for which such animal has then become liable the person having charge of such animal must forthwith deliver up the same to the owner or the person tendering the said charges on his behalf.

Every pound keeper must receive and detain in his custody any animal lodged in his pound until the damages for which such animal was impounded and all lawful fees and charges are paid or until he receives notice of the decision of the justice as hereinafter provided.

Notice of Impounding.

If the owner of any impounded animal is known to the pound keeper, the pound keeper must forthwith deliver at or post to the address of such owner a notice in the prescribed form.

In case such owner is not known or such owner or person notified does not within three days after the posting or delivery of such notice appear at the pound and release the animal so impounded by the payment of the lawful fees, mileage rates and claim for damages the pound keeper must forward thereof to the department for insertion in two consecutive issues of the official gazette a notice in form.

Every pound keeper must without charge therefor in addition to any copies of any notice which he is required to post or deliver post a copy of every such notice in a conspicuous place at his pound (and the nearest post office) and keep and maintain such notice at his pound during the whole of the time such notice may refer to.

Sale of Impounded Animals.

When any animal is not released from the pound within 20 days after the aforementioned notice has been inserted in the official gazette said animal is sold by public auction after notice of such sale has been posted for eight days in three conspicuous places within the pound district (one of which is the post office nearest the pound); and at such sale the pound keeper is the auctioneer and the sale is held at the pound and commences at two o'clock in the afternoon and the pound keeper may neither in person nor by his agent purchase any animal at such sale or have any interest of any kind in any animal so purchased.

If more than one animal is impounded on any distress and the owner thereof is known the pound keeper shall not sell any more of such animals after he has realized from the sales sufficient to satisfy the claims for damages, expenses and fees chargeable against the animals, and the owner of the animals shall be entitled to those remaining unsold.

If the owner of the animals is unknown the pound keeper shall sell all the animals impounded.

The pound keeper shall immediately after such sale send to the department a description of the animal or ani-

mals sold, the date of the sale, amount realized and the disposition thereof.

No pound keeper making a sale under the provisions of any Ordinance shall be liable to a penalty for selling without a license as an auctioneer.

Proceeds of Sale, How Disposed of.

The proceeds of the sale of any impounded animal sold under the foregoing provisions are applicable in payment: (a) Of costs and charges attending such sale; (b) Of all sustenance fees; (c) To the impounder of such animal of the amount due to him for mileage charges and for the damage done; and the residue if any is paid to the owner of such animal or (if not claimed at the time of sale by any person entitled thereto) to the Minister of Agriculture.

Any money so paid to the Minister will be paid over to the owner of the animal sold on evidence (satisfactory to the Minister or other officer appointed to examine into the same) being furnished and application therefor being made to the Lieutenant-Governor within twelve months from the date of the sale; otherwise such money shall form part of the revenue fund of the province.

Complaints of Owner.

The owner of any impounded animal may give notice in writing to the pound keeper that he intends to complain to a justice against the person impounding such animal; and upon receipt of such notice and on deposit with the pound keeper of the amount claimed for damages together with the pound and other authorized charges the pound keeper must release such animal and retain such amount subject to the order of the justice as hereinafter provided.

Such complaint may be upon one of the following grounds: (a) That the impounding was illegal or (b) That the damages claimed are excessive; or (c) That the impounding was illegal but that in any event the damages are excessive; but the justice shall not inquire into any complaint notice of which has not been given.

Within ten days after giving the notice last mentioned the owner may lodge his complaint as set forth in the notice with a justice of the peace who thereupon institutes the like proceedings as are authorized under part LVIII. of the Criminal Code 1892 for justices making orders for the payment of money; and upon hearing the complaint the justice may determine the matter of such complaint; and if the justice—

1. Adjudges that the animal impounded was illegally impounded as claimed the justice shall order the said animal (if not released) to be restored to the owner or (if released) the money deposited with the pound keeper to be repaid and in either event the justice shall order the impounder to pay the costs of the proceedings and all fees the pound keeper is lawfully entitled to; or

2. Finds the amount of damages the impounder has sustained to be less than claimed then the justice orders the excess and the owner's costs of the proceedings to be paid to the owner by the pound keeper out of the money paid in by the owner; and if no money has been paid in by the owner the justice orders the payment forthwith of the amount of the damages so fixed less the costs of the proceedings and in default of such payment the animal impounded shall be sold and the proceeds applied as directed by the Pound District Ordinance; or

3. Adjudges that the animal impounded was legally impounded or that the amount of the damages sustained was not less than the amount claimed by the impounder then the justice shall make an order for the payment forthwith of the amount claimed and all pound and other authorized fees together with the costs of the proceedings; and in default of such payment the animal impounded shall be sold and the proceeds applied as directed by the Pound District Ordinance; or

4. Finds that the animal was legally impounded but the damages sustained by the impounder were less than claimed the justice makes an order as directed by para-

graph 2 above but must not allow costs to either party and proceedings must be taken on any such order as provided in such paragraph.

Nothing in the Pound District Ordinance deprives the owner of any animal impounded of any action, remedy or right that he may have at common law or otherwise by reason of the same being unlawfully seized, distrained or impounded:

Provided that if any action be brought against a pound keeper for anything done by him under such Ordinance he may plead not guilty to such action; and if on the trial of such action it is made to appear that the said pound keeper on demand being made on him therefor gave to the plaintiff or his agent the name of the person who drove the animal to the pound and that he in all respects acted within his duties and powers as such pound keeper judgment shall then be given for him with costs.

Nothing in the Pound District Ordinance prevents the owner of any lands trespassed upon or of any property destroyed from waiving the rights created by the Ordinance and bringing his action in any competent court in consequence of any trespass.

Offences and Penalties.

If any pound keeper—

1. Impounds or assists or invites or employs any person to impound any animal in any district unless such animal was an estray or was trespassing upon the pound keeper's own land in the district surrounded by a lawful fence;
2. Purchases in person or by his agent or has any interest of any kind in any animal sold by auction at a pound of which he is at the time of such sale the pound keeper;
3. Demands or receives any sum for pound notices, sustenance and other fees and charges not authorized by this Ordinance;
4. Fails to pay over any money held by him under the provisions of this Ordinance for any person after pay-

ment of the same has been demanded by or on behalf of such person;

5. Neglects to provide food and water for any animal or works or uses the same in any manner while so impounded;

Provided that no pound keeper shall be liable for any penalty for milking or allowing to be milked any cow while such cow is impounded;

6. Omits or neglects to keep books and to make entries therein as required or makes any incorrect or untrue entry in such books;

7. Allows any animal infected with any contagious or infectious disease to be in the same inclosure with any impounded animal not so affected;

8. Fails to give any notice required;

9. Neglects to do anything required by law to be done whereby damage is incurred by any person; he is in addition to any civil liability which he may incur by reason thereof, guilty of an offence and liable on summary conviction to a penalty not exceeding \$100.

If any person commits any of the next following offences he is liable to a penalty not exceeding \$100;

1. Rescues or attempts to rescue or interferes with any animal impounded or seized for the purpose of being impounded;

2. Destroys or injures or attempts to destroy or injure any pound;

3. Illegally impounds any animal;

4. Leaves open any gate or lets down any bars or makes a gap in any fence for the purpose of permitting any animal to trespass or otherwise causes any animal to trespass.

Fees.

The following are the fees authorized in connection with animals impounded within any pound district:

1. The proprietor of any land trespassed upon or other property injured by any animal, or the proprietor

capturing any estray, is not allowed, paid or awarded any fee or charge for delivering such animal to the pound keeper;

2. To such proprietor for capturing and impounding any stallion of the age of one year and upwards or any bull of the age of nine months and upwards a fee of \$5;

3. To such proprietor for any damage done by any animal an amount not to exceed that mentioned in the statement of claim delivered to the owner or pound keeper with the animal when impounded;

4. To such proprietor for notifying the owner or for every day any animal is lawfully detained before being placed in pound such fees for making such notification and for the sustenance of such animal as a pound keeper may be authorized to charge for like services;

5. To the pound keeper to provide for the care and sustenance of each animal for each day such animal is impounded as follows:

For each stallion or bull twenty-five cents;

For each horse, mule, jack, head of cattle or swine fifteen cents;

For each sheep, goat or goose, five cents;

6. To the pound keeper for notifying owner of animal impounded ten cents;

7. To the pound keeper for forwarding notification to department for insertion in the official gazette ten cents;

8. To the pound keeper for posting notices of animals impounded each such notice to include all animals impounded at one distress or seizure \$1 and the actual cost of newspaper advertising not to exceed \$1 when incurred;

9. To the pound keeper for posting notices of sale each such notice to include all animals impounded at one distress or seizure \$1;

10. To the pound keeper for each mile necessarily travelled in the performance of his duty ten cents;

11. To the pound keeper for selling impounded animals and applying the proceeds as directed $2\frac{1}{2}$ per cent. commission upon the amount realized on the sale.

Fences.

Alberta and Saskatchewan.

Obligation to Fence.

No action for damages caused by domestic animals shall be maintained, nor shall domestic animals be liable to be distrained for causing damage to property unless such property is surrounded by a lawful fence.

Lawful Fences.

Any of the fences in this paragraph described are lawful fences.

Any substantial fence not less than four feet high if it consists: (a) Of rails or boards not less than four in number the lower one not more than eighteen inches from the ground and each panel not exceeding twelve feet in length: (b) Of upright posts, boards or palings not more than six inches apart: (c) Of barbed wire and a substantial top rail, the wires to be not less than two in number and the lower one not more than twenty inches from the ground, posts to be not more than sixteen and a half feet apart: (d) Of three or more barbed wires, the lower one not more than twenty inches from the ground, posts to be not more than sixteen and a half feet apart: (e) Of not less than three barbed wires on posts not more than fifty feet apart, the wires being fastened to droppers not less than two inches in width and one inch in thickness or willow or other poles not less than one inch in diameter at the small end or wire dropper, the said droppers or poles being placed at regular intervals of not more than seven feet apart: (f) Of two posts spiked together at the top and resting on the ground in the shape of an A which shall be joined by a brace firmly nailed near the base, with three rails firmly secured on the one side of the A, the top rail not less than four feet and the bottom rail not less than eighteen inches from the ground, there being also firmly secured on the other side of the A one rail not more than twenty inches from the ground: (g) Of woven wire secured to posts not more than 35 feet apart.

Any river bank or other natural boundary sufficient to keep domestic animals out of any land.

In Alberta any fence within a rural municipality declared to be a lawful fence by a by-law or by-laws for restraining animals at large, but such fences do not include fences immediately surrounding stacks of hay or grain.

Fences Around Crops.

No fence surrounding growing crops in process of being harvested is a lawful fence unless it is situated at least eight feet from such crop and otherwise complies with the provisions of the law.

Fences Around Cut Crops.

Any fence surrounding stacks of hay or grain is a lawful fence if constructed according to the provisions of the paragraph preceding the last paragraph of this Act and situated not less than ten feet from such stacks.

Payment for Fences.

Whenever two owners or occupiers of adjoining parcels of lands desire to erect a line or boundary fence between such adjoining parcels for the common advantage of both they shall bear the expense of the erection in equal shares and thereafter the expense of maintaining and repairing such fence shall be borne by the adjoining owners or occupiers in equal shares.

Whenever the owner or occupier of any parcel of land erects a line or boundary fence between such land and an adjoining parcel of land the owner or occupier of such adjoining parcel of land as soon as he receives any benefit or advantage from such line or boundary fence by the enclosure of his land or any portion thereof or otherwise howsoever shall pay to the first mentioned owner or occupier a just proportion of the then value of such line or boundary fence and thereafter the expense of maintaining and repairing such fence shall be borne by the adjoining owners or occupiers in equal shares.

Liability of Owner of Trespassing Animal.

The owner of any domestic animal which breaks into or enters upon any land inclosed by a lawful fence shall be liable to compensate the owner of such land for any damage done by such animal.

Arbitration of Dispute Between Owners.

In case adjoining owners or occupiers of land disagree as to what is a lawful fence or as to the proper location of a proposed or existing line or boundary fence or as to the just proportion of a line fence which each such owner or occupier should make or put in repair or as to the amount which any such owner or occupier should make compensation to the other for making or keeping in repair any fence or in case parties interested disagree as to the amount of damages done by animals breaking into or entering upon any land inclosed by a lawful fence they shall each appoint an arbitrator to determine and settle the matter in difference.

Right to Impound Preserved.

Nothing in the preceding section shall be held to affect in any way the right of any person to seize or impound cattle in any herd or pound district under the provisions of any Act authorizing the seizing or impounding of cattle in any such district or to affect the demand or recovery of damages in the mode prescribed by such Act.

Fences Across Trails.

It shall be the duty of any person erecting any wire fence across any trail that has been in common use by the public for a period of three months immediately previous to such erection to place a top rail on such fence where it crosses the trail and for a distance of two rods on each side from the centre of the trail.

In Alberta such a rail may be either a top rail or pieces of wood commonly known as droppers not less in length than the height of the fence nor less than two inches wide and at intervals not exceeding six feet.

Manitoba.**Survey of Boundary Line.**

If the owner of land requires to have any boundary line surveyed, he shall give notice thereof in writing to all parties interested and in one month thereafter may employ a duly qualified surveyor, who shall survey the said line, and each party interested shall pay his proportionate share of the expenses of the survey.

Removal and Payment for Fences.

No line fence shall be removed without the consent of all parties interested, and whenever any owner of land erects a fence, the owner of the adjoining land shall, as soon as he encloses lands adjacent to or along the line fence, pay to the person who erected the line fence or to his assignee a fair compensation for one-half the line fence; such compensation may be determined by arbitration if not otherwise agreed upon.

Obligation to Repair.

Each of the parties occupying adjoining tracts of land shall make, keep up and repair a just proportion of the division or line fence on the line dividing such tracts, and equally on either side thereof.

Lawful Fences—What Are.

Any fence coming within the meaning of a lawful fence in any by-law of a municipal council in that behalf is to be considered a lawful fence.

Notice of Removal of Fence.

The owner of the whole or part of a division or line fence which forms part of a fence enclosing the occupied or improved land of another person, shall not take down or remove any part of such fence—(a) without giving at least twelve months' previous notice of his intention so to do to the owner or occupier of such adjacent enclosure; (b) nor unless such last mentioned owner or occupier, after demand made upon him in writing by the owner of such fence, refuses to pay therefor such sum as three fence viewers of the municipality, or a majority of them, in writing determine to be the reasonable value thereof.

When no fence viewers have been appointed by the municipality, fence viewers may be appointed, one by each of the interested parties and the third by those thus appointed, who shall award the sum to be paid for the said fence, or his proportion thereof.

Fencing of Unenclosed Land.

When any land which has lain unenclosed and in common is afterwards enclosed, the proprietor of the adjacent

land, when improved occupied or enclosed, shall pay to the owner of the division or line fence standing upon the divisional line between such land and the enclosure of any other occupant or proprietor, a just portion of the value of the division line fence.

Water Fences.

When under like circumstances, a water-fence running into the water is necessary, the same is also to be made in equal parts, unless the parties otherwise agree.

When lands belonging to or occupied by different persons are divided from each other by any river, pond, creek, marsh or muskeg, which of itself is not a sufficient barrier, and it is impracticable to fence upon the true boundary line, the fence shall be set up on one side of the river, brook, pond, creek, marsh or muskeg, or partly on one side and partly on the other as may be just.

Fence Viewers.

The disputes between the owners or occupants of adjoining lands, in regard to their respective rights and liabilities are decided by the majority of three fence viewers.

Refusal of Party to Appoint Fence Viewer.

If any party neglects or refuses upon demand made in writing to appoint a fence viewer, in order to decide on his liabilities with regard to any dispute under this Act, then the other interested party may apply to a justice of the peace for the appointment of a fence viewer, who shall act as if appointed by the party neglecting or refusing to do so.

Other Fences.

Nothing in the fence law prevents an owner or occupier of a tract of land from erecting fences on the land owned or occupied by him, within the limits of such land; and in that case said occupier or owner shall not be liable to contribute to the erection, keeping up or repairing of any proportion of the division or line fences which may be dividing such tract of land from another.

British Columbia.**Maintenance of Boundary Fences.**

Owners of adjoining lands shall make, keep up, and repair a just proportion of the fence which marks the boundary between them, or if there is no fence they shall so make, keep up and repair the same proportion of the fence which is to mark such boundary.

Proceeding on Disputes.

In case of dispute between owners respecting such proportion, the following proceedings are adopted:

Either owner may notify the other owner, or the occupant of the land of the owner so to be notified, that he will, not less than one week from the service of such notice, cause three fence viewers of the locality to arbitrate in the premises. Such owner so notifying shall also notify the fence viewers, not less than one week before their services are required. The notices in both cases shall be in writing, signed by the person notifying, and shall specify the time and place of meeting for the arbitration, and may be served by leaving the same at the place of abode of such owner or occupant, with some grown up person residing thereat, or, in case of such lands being untenanted, by leaving such notice with any agent of such owner and where the owner of unoccupied lands cannot be found, after reasonable diligence, or is absent from the Province, it shall be in the power of the Judge to cause such owner to be notified by letter, mailed to his last-known place of residence, and to proceed and to cause all subsequent proceedings to be taken in his absence, and all such proceedings shall be as valid as if the notification hereby required to be given to an occupant had been given to such owner.

The owner notified may, within the week, object to any or all of the fence viewers notified, and in case of disagreement the said Judge hereinafter mentioned shall name the fence viewers who are to arbitrate.

The fence viewers shall examine the premises and, if required by either party, they shall hear evidence, and are authorized to examine the parties and their witnesses on oath, and any one of them may administer the oath or an affirmation as in Courts of law.

Award by Fence Viewers.

The fence viewers shall make an award in writing, signed by any two of them, respecting the matters so in dispute. The award shall specify the locality, extent, description, and the lowest price of the fence it orders to be made, and the time within which the work shall be done, and by which of the said parties the costs of the proceedings shall be paid, or whether either party shall pay some proportion of the costs, and direct by whom any fence or portion thereof directed to be made by virtue of such award shall be made or repaired and maintained, as the case may be. And in making any award the fence viewers shall regard the nature of the fences in use in the locality, and generally the suitability of the fence ordered to the wants of each party; and where, from the formation of the ground by reason of streams or other causes, it is found impossible to locate the fence upon the line between the parties, it shall be lawful for the fence viewers to locate the said fence either wholly or partially on the land of either of the said parties where to them it may seem most convenient; but such location shall not in any way affect the title to the land. If necessary, the fence viewers may employ a land surveyor and have the locality described by metes and bounds.

Enforcement of Award.

The award may be enforced as follows: The person desiring to enforce it shall give to the owner or occupant of the adjoining lands a notice in writing requiring him to obey the award; and if the award is not obeyed within one month after the service of such notice, the person so desiring to enforce it may do the work which the award directs, and immediately recover its value and costs from the owner by action in any County Court having jurisdiction in the locality where the lands are situate; Provided always that the Judge of such County Court may, on application of either party, extend the time as he may think just.

Any person not the owner of land notified in the manner above mentioned shall immediately notify the owner:

if he neglect so to do, he shall be liable for all damage caused to the owner by such neglect.

Appeal to the Supreme Court.

Any person dissatisfied with the award made may appeal therefrom to the Supreme Court.

Herd Districts

Alberta and Saskatchewan.

Organizaton of Districts.

Herd districts are organized by order of the Lieutenant--Governor-in-Council and published in the official gazette. They are not less than 144 square miles in area and in Alberta must not be within the limits of any pound district and may be formed only in that part of the Province lying north of Township 34, E. of Range 11 and S. of the 55th parallel of latitude.

In Saskatchewan they must not be formed within the limits of any pound district, rural municipality or village.

Operation of the Act.

The provisions of the Herd District law apply in a herd district between May 15 and October 30, both days inclusive, in each year.

Any proprietor may distrain any animal in the herd district within any period in which the Herd District law is in force in such district, which is doing damage upon his cultivated land or stacks of grain or hay or upon any slough growing hay in his possession or with respect to which he has a permit or license to cut hay; and when any such distress is made the distrainor may drive and deliver the animal distrained to the nearest accessible pound keeper in the herd district and the said pound keeper shall impound such animal and shall be responsible for the feed and safe keeping thereof so long as he is legally bound to hold the same and such pound keeper is empowered to collect the amount of the damage caused by and all the charges for the keeping and other incidental expenses connected with such animal before delivering up the same to the owner; and it shall be the duty of the distrainor to leave with the pound keeper a statement in writing de-

scribing the animal distrained, the name of the owner (if known), the place where such distraint was made, the extent of the damage and the amount of the claim therefor and of his reasonable charges incurred in driving the animal to and delivering the same to the pound keeper.

Manitoba.

See Pounds Districts—Manitoba—in this chapter.

British Columbia.

Animals at Large.

The following animals must not be permitted to run at large at the times and in the places following:

(a) Swine at any time of the year; or (b) Stallions of one year old or upwards at any time of the year, to the west of the Cascade Mountains; and stallions of two years old and upwards from the first day of August to the first day of May, to the east of the Cascade Mountains; or (c) Bulls over nine months old from the first day of December to the first day of July, east of the Cascade Mountains, or at any time west of the Cascade Mountains; except in such districts as the Lieutenant-Governor-in-Council may from time to time define.

And the owner of any such animal permitting the same to run at large within the prohibited time and places aforesaid is liable for every such offence on summary conviction to a penalty of not more than \$50.

Municipalities may provide by by-law or otherwise for the prevention of the running at large of any animals within the limits of such municipalities.

Provisions to Prevent Injuries by Animals.

The owner or owners of any animals unlawfully at large is liable for the actual damage committed by his or their animals when running at large, such damage to be recovered in an action at law by the person or persons sustaining the same, or by the arrest and sale of such animals.

Arrest of Animals Unlawfully at Large.

The owner or owners, occupier or occupiers of any premises may arrest and detain any swine found trespass-

sing upon his or their premises, and any person may arrest and detain any swine found at large and, if detained under authority of this Act, may supply any such swine with fit and sufficient food and water, and safely keep the same at the expense of the owner or owners of the said swine.

Any provincial police officer or constable or any bona fide settler or resident in the Province who is the owner of a band or drove of mares or herd of cows, which he is in the habit of pasturing either on his own or on the public lands of the Province, may arrest and detain any stallion or bull which he may find running in such band or herd, and, if detained, may supply such stallion or bull with fit and sufficient food and water, and safely keep the same at the expense of the owner of said stallion or bull.

Immediately after any such arrest, the person making the same shall cause a notice of the arrest to be served on the owner or his agent if known, or, if the owner or his agent be not known, to be posted at the public-house or school-house and post-office nearest the place of arrest; and such notice shall contain a description of such animals, including every mark or brand (if any) and colour, and shall state the cause of arrest and detention and the date of the impounding of such animals and of the service or posting of such notice, and that the owner is required to reclaim such animals forthwith, or in default the animals will be sold; and such notice must be signed by the person making such arrest, and state his address.

If within ten days from the serving of such notice or the publication thereof in the manner aforesaid the owner of said animals shall not reclaim them and pay all damages sustained by reason of their trespass, together with the fees and costs of arrest, maintenance and detention, the person making such arrest may thereafter sell such animals by public auction, of which sale five days' notice shall be given and which shall be posted up at the public-house or school-house and post-office nearest to the place of arrest; and such sale may be made by the person aforesaid making such arrest, or any person authorized by him, without the taking out or payment of any license to the

Government or to any municipal authority therefor; and out of the proceeds of such sale the person making such arrest may retain the proper fees and costs, the expenses of the sale (if any), and a sum to cover all damages sustained by reason of the trespass (if any), and shall stand possessed of the balance (if any), in trust for the owner of such animal; but such sale must be effected within 20 days from the date of arrest; Provided, however, that the owners may prove the ownership of their animals and recover them by paying all costs, charges and damages at any time before the sale takes place. And no such sale is lawful unless permission for the same shall have been obtained from some Stipendiary Magistrate or Justice of the Peace.

If the parties cannot agree as to the amount of the damage sustained, then each party shall choose an arbitrator, or in case of the refusal or neglect of the person claiming such animals to appoint an arbitrator, any Justice of the Peace residing in the electoral district where such animals are impounded may appoint such arbitrator.

The two arbitrators shall choose a third person, and these three persons, or a majority of them, shall finally determine the amount of damage caused by the said animals, and award by whom the costs of the arbitration shall be paid; and if the trespass be repeated by neglect of the owner of the said animals, he shall for the second and every subsequent trespass be subject to double the damage sustained by reason of the trespass, and double all costs and charges, to the owner or occupier of the said premises: Provided also that should the sum derived from the sale of such animals trespassing as aforesaid not be sufficient to pay all costs, charges and damages, the party sustaining such damages shall be entitled to bring an action against the owner of the animals for whatever sum may be due or unpaid.

Wild Horses.

On the written request of at least five owners of horses ranging upon the public lands of any district in that

part of the Province lying east of the Cascade Mountains, a license may be issued by the Government Agent of the district to any person named in such request, authorizing such person to shoot unbranded horses running wild upon the public lands within the portion of the said district mentioned in such request and described in said licence, upon such terms and conditions as such Government Agent may indorse upon such licence.

Any person having killed a horse under the provisions of such licence shall, as soon as possible, report the same to the Government Agent who issued the licence, stating the date and locality of killing and description of animal.

The last preceding section shall apply only to that part of the Province lying to the east of the Cascade Mountains.

Damages.

In any action brought to recover damages for injuries caused by domestic animals, it shall not be necessary for the plaintiff, in order to entitle him to a verdict, to aver in any pleading or to adduce any evidence that the defendant knew, or had the means of knowledge, that the animal, for the injuries caused by which the action shall be brought, was or is of a vicious or mischievous nature, or was or is accustomed to do acts causing injury; but such plaintiff, if otherwise entitled to such verdict, shall not be deprived thereof by reason of the absence of any such averment or the non-production of such evidence.

Organization of Pounds.

Manitoba.

In this province pounds are established by municipal by-laws. Such by-laws may also provide

(1) for preventing persons from taking animals, geese or poultry out of pounds without first paying all damages and costs for which the poundkeeper has a right to detain the same;

(2) for determining the compensation to be allowed for services rendered in carrying out the provisions of any Act or by-law, with respect to animals, geese or poultry impounded or distrained and detained in the possession of the distrainer;

(3) for limiting the right to recover damages for any cattle, horses or sheep trespassing upon land, or for the trespass, to cases in which the land is enclosed by a fence of the nature, kind and height required by the by-law.

Notice of Impounding.

In any case where mules, horses, sheep or cattle are impounded the poundkeeper, before he shall have the right to sell the same shall immediately after the impounding cause to be inserted in an issue of The Manitoba Gazette a notice describing the animals impounded, the age as nearly as possible, sex and colour, with brand or any mark of identification, which notice may be as follows:

Municipality of _____, pound No. _____,
on section _____, in township No. _____ range No. _____
(or as the case may be). Impounded on _____ day of _____,
19____, (kind of animal and number of same),
colour _____, age _____, (brand or mark of identification).

A.B.,

Poundkeeper.

The fee to be paid for the insertion of such notice shall be one dollar, which shall be transmitted to the King's Printer with said notice.

Said animals, when not claimed, shall remain in pound for thirty days before sale.

When animals, geese or poultry impounded are sold by reason of not being claimed, the proceeds, after deducting expenses, shall be handed to the treasurer of the municipality to be retained by him in special account for one year when, if not claimed, they shall then go to the general funds of the municipality.

Notice of Stray Animals.

It shall be the duty of the occupant of any premises on which any stray cattle or horses may be for a period of two weeks with the knowledge of such occupant, to notify the clerk of the municipality, either personally or by mail, describing such animals as nearly as possible, giving the age, sex and color, with brand or any mark of identification; and the clerk shall keep a record of all such stray animals with such description as may be furnished him, and shall give such information to any person who may make inquiry, either personally or otherwise, regarding the same and such clerk may charge a fee of twenty-five cents for every search in such register. In case any such occupant shall neglect to notify the clerk in the manner herein provided immediately at the expiration of the said period of two weeks, he shall be liable to a fine not to exceed ten dollars.

British Columbia.

For pounds see rules above on estray animals—British Columbia.

MASTER AND SERVANT

A SERVANT is a term used in law to denote any person who is employed by another to perform services for him. The employer is called generally in law the master. The master to be such must have the right to order how the work is to be done, the amount of time to be devoted to it, and exercise a general oversight over it. Unless the person employing another has such rights over him and the work he employs him to do, such person does not become his servant. An agent is not a servant because he is not subject to oversight by his principal as to the manner of doing his work or as to the time which he must devote to it. A contractor is also not a servant because the person who employs him or rather contracts with him to do work has no control over the contractor as to how the work is to be done and does not oversee it.

Domestic and Menial Servants.

The term "servant" usually suggests to the mind, domestic servants. In the eyes of the law they are only one class of servants. It must be borne in mind that any person employed by another, whether such person employed is a domestic servant, day laborer, mechanic, or other skilled worker, policeman, clerk, school teacher, manager of a company, city commissioner, etc., all are in the eyes of the law servants of the person employing them, if they are employed under the conditions mentioned above, and the law stated in this chapter applies to all alike, be their employment humble or exalted.

Who May be Masters.

Any person capable of contracting (See Contracts) may employ a servant. Where a servant is employed by a married woman, the husband is liable to the servant whether he agrees to the employment or not, provided the employment of the servant is necessary to his wife. He is liable also for the acts of and to such servant generally in the same way as other masters are liable to servants.

Who May be Servants.

Any person who can legally contract can become a servant. Infants are bound by their contracts of service, if the service is beneficial to them, but not if not beneficial. Married women may contract to serve, so may lunatics and idiots unless the employer employing the lunatic or idiot knew they were insane.

How Contract of Service Entered Into.

The contract of service may be entered into by word of mouth, but if for a period longer than a year, must to be legal and binding be in writing. It is usually more satisfactory to have the contract of service in writing. Contracts of apprenticeship must be in writing and be signed by the infant apprentice, otherwise the apprentice is not bound.

Rights of Servants.**(a) Wages.**

Wages or other remuneration for services by a servant are only recoverable where there is an express or implied contract by the master to pay such wages. No person is liable to another for services performed for him by that other unless he has agreed to pay for such service or unless he has by words or conduct allowed such person to perform the services, such person believing he will be paid for such services. Additional wages over and above the usual rate can only be recovered where there is a distinct contract by the master to pay them. Where wages are payable at certain times they can be recovered only when due.

(b) Wages When Servant is Ill.

Wages are payable when the servant is unable to work through a temporary illness and returns as soon as he is able to work, unless the contract of service provides otherwise.

(c) Servant Leaving Without Notice or Dismissal.

A servant is not entitled to any wages or salary earned where he leaves during the term of service without

due notice as provided in the contract or is dismissed for good cause, unless the wages are payable daily.

(d) Profits.

The master may distribute among his servants or employees a share of the profits, but the employee does not thereby become a partner of the employer or entitled to interfere in the employer's business.

(e) Employer's Duty to Find Work.

This duty depends on the circumstances of the case and the agreement entered into between the employer and the servant.

Duration of Time of Service.

The term of service, if no time is mentioned in the contract and if the servant is paid by the year or fractional part of a year, is deemed to be for a year, but if paid by the month or week or day, it is presumed the hiring is for these periods. Contracts of service should state the length of time of the service and should provide for its termination by notice.

Termination of Service.

The contract of service is terminated as follows:

(a) Dissolution of Partnership.

Where a servant is employed by a firm of partners the service is terminated by the partnership becoming dissolved (See Partnership).

(b) Winding Up of Company and Insolvency.

An order winding up a company or an assignment for the benefit of creditors, has the effect of discharging all employees of the company or of the business assigned.

(c) Wrongful Dismissal.

When a master dismisses a servant wrongfully the servant's duties are at an end. (See below as to the servant's rights in such cases.)

(d) Notice.

The contract of service is terminated by either the master or servant giving the notice stated in the contract. If no notice is provided for in the contract, contracts of a monthly or yearly hiring are terminated by a month's notice, or if by the week or day by a week's or day's notice as the case may be, or where the contract is for an indefinite time a reasonable notice is required, generally a month's notice.

(e) Dismissal Without Notice.

A master is justified in dismissing a servant without notice in the following cases, viz: (1) Where the servant wilfully disobeys the master's reasonable orders, but not orders endangering his life or person, or orders not pertaining to the servant's work. (2) Where the servant misconducts his master's affairs or is guilty of fraud or dishonesty in so doing, or is guilty of immoral or insubordinate conduct outside of or in connection with his master's affairs. (3) Where the servant is abusive or disturbs the peace of the family. (4) Other conduct meriting dismissal without notice includes habitual neglect of duties, incompetency for duties he is to perform, permanent incapacity or illness, but not temporary illness, taking secret profits in connection with his master's business, having a personal interest conflicting with his master's interests. The master is not required to give the servant a good reason for the dismissal if a good reason exists. If after the master becomes sure of the servant's misconduct he continues to employ him, he cannot afterwards dismiss him for that particular offence. In certain cases the servant is not entitled to wages when dismissed for misconduct.

(f) Termination of Apprenticeship.

An infant cannot terminate a contract of apprenticeship until he attains the age of 21 years unless the termination would be advantageous to him. The apprenticeship is also terminated by the death of the master, or a change of masters, but not by the misconduct of the apprentice as in the case of a servant. The apprentice is only justified

in leaving the master where he has good reason to believe the master will do him actual physical harm. The master is justified in discharging the apprentice only when he becomes permanently incapacitated through sickness or accident.

Remedies Where Master or Servant Break Their Contract.

(a) Where Servant Breaks his Contract.

When a servant leaves his employer either without notice where the contract provides for notice, or where he agrees to serve for a certain length of time and leaves before that time expires without just cause or excuse, the master may retain all wages except those already earned by the servant and due and payable by the master, and sue the servant for damage for breach of his contract.

(b) Where Apprentice Breaks his Contract.

In this case the person who has bound himself surely to the apprentice, is liable for all loss the master of the apprentice has suffered.

(c) Penalty for Servant Breaking Contract. (See below).

(d) Where Master Wrongfully Breaks the Contract.

Whenever the master dismisses the servant without notice where notice is required to be given, or where the service is for a certain length of time and the master dismisses the servant before or after the period of service commences, and the dismissal is wrongful, not being for any of the causes mentioned in sub. par. (e) p. 269 above, the servant may recover from the master all wages earned, his expenses going to and from his home to where he was working when dismissed and any loss he has suffered by the dismissal. He must make every effort to secure other employment and will only be entitled to such amount of wages as he has unavoidably lost by reason of the dismissal. Such wages and damages may be recovered either before a Justice or Magistrate as described in the following paragraph, where the amount recoverable is limited to a certain amount, or the servant may sue the master in the ordinary courts in which case he can recover all sums

due him. Where the wages and damages due by the master amount to sums within the limits which the Justices or Magistrates may award, the case should be taken before them, the procedure being very simple and a Judgment obtainable in much less time than by the ordinary machinery of the courts.

Special Procedure Before Magistrates and Justices in Master and Servant Disputes.

Alberta and Saskatchewan.

(a) Improper Conduct of Servant.

Any person employed by verbal or written agreement as clerk, apprentice, servant, laborer or otherwise, who is guilty of drunkenness or of absenting himself without leave from service by day or by night or of neglecting to perform his duties or to obey his master or of wasting or destroying his master's goods is guilty of an offence and upon complaint to a Justice of the Peace or Magistrate may be fined \$30.00. The complaint must be made within three months after the servant leaves the employment.

(b) Non-Payment of Wages.

Any servant improperly dismissed whose wages have not been paid may within three months after leaving the employ of his master and after having made demand from his master for his wages, make a complaint on oath before a Justice or Magistrate upon which the Justice may summon the master before him and inquire as to the whole matter. The master may set up against the servant's claim money due by the servant to the master. Before such Magistrate or Justice the servant cannot recover more than two months wages and costs (in Saskatchewan \$100.00 and costs) and in addition thereto such sum not exceeding four weeks wages at the rate he was earning as damages for his dismissal. The Justice may also discharge the servant from the master's employ. As stated above, the servant may, instead of taking his case before a Magistrate or Justice, sue in the ordinary Courts and should do so where the amount the master owes him greatly exceeds that which the Magistrate may allow. The

amount the Magistrate orders the master to pay may be recovered, in case the master does not pay, by seizure and sale of the master's goods.

Manitoba

(a) Misconduct of Servant.

The same law applies as in Saskatchewan and Alberta, except that the penalty for the servant's misconduct is limited to \$20.00 and the master must commence the prosecution by complaint before a Justice of the municipality in which the servant is found within six months after the offence is committed by the servant.

(b) Engaging Servants Outside of Manitoba.

Laborers, journeymen, servants, clerks, apprentices or other employees engaged outside of Manitoba to work in Manitoba are bound by such engagements and must pay back to their employer all sums advanced by him for passage and expenses and are liable for any misconduct as servants engaged in Manitoba.

(c) Harboursing Servants.

Persons harboursing servants who have deserted their employers wrongfully are liable to a penalty of \$20.00. Prosecutions must be commenced within six months after the servant is so harbored.

(d) Ill Treatment of Servants.

Any master ill treating a servant or withholding from him necessities of life is liable to a fine of \$20.00.

(e) Non-Payment of Wages.

Any servant whose wages are not paid or who is improperly dismissed may at any time within six months after the wages are due make complaint on oath before a Justice of the municipality or judicial division in which the master resides and thereupon the Justice after summoning the master and hearing both parties and their witnesses, may award the servant the amount of wages to which he is entitled and damages for improper dismissal, not in any case to exceed \$100.00.

(f) **Collection of Wages from Master.**

In case the master does not pay the wages found due by the Justice within the time limited by him for payment, a warrant of distress may be issued under which the master's goods may be seized and sold to realize the amount due. Where the wages due are earned by farm labor the laborer's claim for wages will be a first charge to the extent of \$75.00 over every other claim against the master upon the crops grown upon the premises, if the labor has been performed upon such crops, but there is no such right to priority of claim if the servant is related to the master by marriage.

British Columbia

(a) **Contracts of Hiring.**

No agreements are binding either upon master or servant for a period longer than nine years. Such agreements may contain a provision whereby the servant shares in the profits with the master without thereby becoming a partner of the master.

(b) **Hotelkeeper's Lien.**

Hotel and boarding house keepers may retain the wearing apparel of any laborer in respect of sums due for board, etc., but only to the amount of \$6.00, and must return such apparel to the laborer upon tender to him of the amount of \$6.00. Other goods of the laborer may be held in respect of larger sums due.

(c) **Disputes.**

Disputes between master and servant arising after the term of engagement has ceased respecting matters prior to the termination of the employment may be settled before a Justice of any county in which the parties reside. Such proceeding must be commenced within one month after the engagement ends.

(d) **Non-Payment of Wages.**

Any servant may lay a complaint on oath before any justice of the county in which the master resides in case of any non-payment of wages. The Justice holds a hearing similar to that held in the other provinces. No greater

sum than \$50.00 and costs may be recovered for wages. If the wages found due by the Justice are not paid within 21 days of the time in which he orders them to be paid, the Justice may issue a distress warrant and seize and sell sufficient of the master's goods to satisfy the amount found due.

(e) Laborers Engaged Outside of British Columbia.

Contracts entered into outside of British Columbia respecting engagement of unskilled laborers to work in British Columbia are void but all such contracts are good where skilled laborers are so engaged.

(f) Medical Attendance.

Whenever thirty or more workmen request the master in writing to provide medical attendance and for that purpose to deduct from their wages sufficient to pay same, the master shall supply the required medical attendance. The workmen must each select their own medical attendant, his name being entered by the master. Such attendant may at any time be changed by the workman giving one month's notice to the employer. No money so collected from the workmen may be paid to any doctor not approved by a majority of the workmen. The employer of the workmen must account for all moneys received and paid out on this account. He is liable to a penalty of \$50.00 if he refuses to comply with the workmen's request or attempts by force to compel them to select any particular doctor.

Duties of the Master to the Servant.

(a) Food and Clothing.

The master is not, except in the case of domestic servants, bound to supply board and lodging to the servant unless he agrees so to do in the contract of service.

(b) Medical Attendance.

Unless so provided in the contract of service a master is not required to supply the servant with medical attendance when sick. When the master calls in medical attendance for the servant he then becomes personally liable.

(c) **Character Testimonial.**

No servant however faithfully and efficiently he has served his master has any legal right to a testimonial from the master. The master is only liable where he gives a false character to the servant or libels the servant in any testimonial given by him.

(d) **Indemnifying Servant.**

A master is liable to indemnify his servant in respect of any liabilities and expenses incurred by the servant while he is engaged in his duties as servant but not when he is engaged in matters not connected with his duties or where there was no need to incur the expense or where the servant incurred it solely through his carelessness or the transaction itself was unlawful.

Master Liable to Compensate Workmen for Injuries.

This branch of the law is rather complex and involved and in consequence an outline of the subject, only, is here attempted.

When any servant who is a workman or laborer, skilled or unskilled, etc., is injured while performing the duties connected with his employment, he has in all cases except those mentioned later in this paragraph, a right to compensation from the master for the loss he has suffered by reason of such injuries. If the injury was due to the negligence of the master he can commence an action against his employer, claiming damages in respect of his injuries or he can in any case except those referred to later, apply for compensation under a special act called "The Workmen's Compensation Act." This Act, the provisions of which are practically the same in all provinces, provides a speedy method whereby injured workmen may be compensated in respect of injuries they have received. Both these methods of securing compensation are described below. In all cases of injuries the services and advice of a solicitor should be immediately sought in order that the compensation recoverable may not be lost by delay in taking all necessary proceedings.

Actions at Law.**(a) When Servant may Recover.**

A servant may recover damages in an action at law against his master, whenever, whether a minor or an adult, i.e., over 21 years of age he has suffered actual physical injury as a result of an accident occurring while he was engaged in duties connected with his employment, such accident being a result of the master's carelessness or negligence such as providing an inadequate or defective plant and buildings in which the workmen are employed or using unsafe or dangerous machinery and tackle, or a defective system or method in carrying on his work. The master is also liable to the servant where the accident by which he was injured was caused by the carelessness or negligence of any other servant of the master, whether that other servant is a laborer, mechanic, foreman, manager or any other servant whatsoever. The damages recoverable vary with the time from work the injured servant has lost and will lose as a result of the accident and the earning power of the servant before and after the accident and include all expenses incidental to the accident, such as medical attendance, hospital fees, etc.

(b) When Servant may not Recover.

The workman injured cannot recover damages from the master where he received the injury doing work outside the scope of his duties and not in the master's interests, or where he was at the time of the injury in a place in which he was not permitted to be, or was himself guilty of carelessness and negligence without which the accident would not have happened, or knowing the employment to be dangerous before he entered it, he received his injuries from a risk incidental thereto and not due to the master's negligence.

(c) Contractors.

Where the workman is employed by a contractor, the contractor and not the employer of the contractor is liable where the accident causing the injury is due to the negligence of the employee of the contractor.

(d) **When Master not Liable.**

The master is not liable in an action at law by the servant where the servant's injury occurred through some accident happening while the servant is performing the master's duties, or if the accident occurred through some cause over which the master had no control, such as a tornado, earthquake, cyclone, etc., or the accident caused could not have been prevented by any care or foresight on the master's part.

Manitoba and British Columbia.

The law as to compensation is similar to that in Alberta and Saskatchewan with the following differences:

(a) No domestic or menial servant may recover damages for injuries received in such employment.

(b) Where the servant is injured by the carelessness or negligence of some other servant employed by the master, the master is only liable where the servant causing the injury is superintending the master's work and does it carelessly or negligently or is a foreman or other person whose command the injured servant had to obey and was injured in consequence. The master is not liable to servants injured through the carelessness of any other kind of servant unless the master was guilty of negligence in employing such inefficient servants. Where the servant knows of any defect in the plant, as a result of which he is injured he cannot recover unless he has notified the master concerning such defect, unless he knew the master was aware of such defect.

The servant cannot in Manitoba recover more than three years' earnings or \$2,000. In British Columbia the master must be served with notice of the injury within two weeks of the occurrence.

Workmen's Compensation.

This is a scheme of compensation to workmen for injuries received by them in the course of their employment. The scheme is set out in similar acts in each of the Provinces, called "The Workmen's Compensation Acts." It

applies only to certain classes of work and the amount recoverable is strictly limited in three of the Provinces.

Kind of Work to Which Compensation Applies.

Workmen receiving injuries while employed in or about railways, factory, mine, grading or engineering work, or upon a building which is either being constructed, repaired or demolished. In British Columbia such building must be at least 40 feet in height. In each of the provinces work on farms or connected with farming operations is expressly excluded.

Where Employer Liable to Compensate.

When workmen engaged in any of the above mentioned classes of work are injured while so engaged, they have in all cases except those mentioned below, a right to compensation, whether or not the accident by which the workman was injured occurred through the master's negligence or that of any one working for him, and they are so entitled to such compensation whether or not the servants themselves were guilty of negligence causing the accident or voluntarily contracted to work at dangerous work. The workman to recover compensation in British Columbia must be disabled for at least two weeks, in Manitoba, one week, and in Alberta the workman must be disabled from earning full wages. In British Columbia, Manitoba and Alberta the workman cannot recover where the accident by which the injury was inflicted was caused by the servant's own serious and wilful misconduct, but in Manitoba if the workman is totally disabled this rule does not apply, and in no case does it apply in Saskatchewan.

Contractors and Sub-Contractors.

Persons employed by contractors and sub-contractors of the person letting the contract for the work can secure compensation for their injuries from such person.

Employer Insolvent.

If the employer makes an assignment for the benefit of creditors or if a company is ordered to be wound up, any insurance carried by the employer against his liability for compensation passes to the workman.

Contracting Out of Act. (Alberta and British Columbia).

Workmen may not enter into any contract depriving them of any benefits they are entitled to under the act and such contracts will be void unless the employer arranges a scheme equally as beneficial as that provided by the act, and such scheme is duly approved of by the Attorney-General of the province. Workmen are not to be compelled as a condition of their entering into their employment to consent to such scheme and if, dissatisfied at any time therewith, may apply to the Attorney-General, who may order the scheme to be discontinued.

How Claim for Compensation Enforced.**Alberta, British Columbia and Saskatchewan.****(a) Notice.**

As soon as possible after the accident causing the injury and before the employee has of his own free will left such employment, a notice in writing giving the name and address of the person injured and stating in ordinary language the cause of the injury and its date, should be either delivered in person or sent by registered post to the employer at his place of business or residence. In Manitoba the notice must be sent within fourteen days of the accident unless the employee injured is temporarily out of the province, when such time is twenty-eight days.

Arbitration.

The amount of compensation is settled by an arbitration similar to other arbitrations (see chapter on Arbitrations). Such arbitration must be commenced within six months after the accident causing the injury occurs, or, if the injury causes death, within six months after death.

In Saskatchewan the compensation is recovered by an ordinary suit at law. As soon as the accident occurs the workman should immediately consult a solicitor, so that no time may be lost in prosecuting the claim.

Amount of Compensation Recoverable.**Alberta, British Columbia and Manitoba.****(a) Where the Injury Results in Death.**

If a workman leaves any persons wholly dependent upon him, such dependents receive a sum equal to the total

earnings of the deceased workman during the three years previous to his death, or if he had not worked in the place where injured for three years previous to death his dependents receive a total of three years earnings at the rate earned weekly previous to death. The total amount so received cannot in Alberta exceed \$1,800, and in British Columbia and Manitoba \$1,500. If the workman leaves persons only partially dependent on him they receive such sum as circumstances warrant. If a workman leaves no dependants the employer is required only to pay such sum as will cover the workman's medical and funeral expenses, not in any case to exceed \$200.

(b) Where Workman is Totally or Partially Disabled.

In such cases a workman is entitled to receive during the time he is disabled a sum per week equal to one half of his previous average weekly earnings during the previous twelve months, not to exceed \$10.00 per week, unless the workman is under 21 years of age and earns less than \$10 per week, in which case he will receive a weekly allowance equal to the total amount previously earned, not in any case to exceed \$7.50 per week. The workman must submit himself for medical examination from time to time. After the workman has received weekly payments for six months a lump sum to cover all of the payments may be agreed upon.

Saskatchewan.

The amount payable is in all cases fixed by the Judge who tries the case, no fixed amount having been provided by law as in the other Provinces.

Choice of Remedy.

Workmen injured while engaged in the kinds of work referred to in the Workmen's Compensation Acts may apply for compensation under the scheme of such Workmen's Compensation Acts, or proceed at law. The practical question in each case will be as to which procedure will give the larger amount of compensation and also which is more likely to be earlier settled.

Liability of Master to Other Persons in Respect of the Acts of the Servant.**(a) Under Contract Entered into by Servant.**

The master's liability on contracts entered into by the servant on the master's behalf is practically the same as in the case of principal and agent. (See chapter on Agents.)

(b) Liability of Master for Servant's Wrongs.

The master is liable to a person whose person or property is injured or otherwise damaged by the servant while the servant is acting in his master's interests and performing the duties he is employed to perform for the master's benefit. The master is not liable for wrongs done to another person's person or property by the servant where the servant commits such wrong while he is doing something for his own benefit and outside the scope of his duties.

(c) Infants and Corporations as Masters.

Servants of such masters are not authorized to do any act and cannot bind such masters in respect of any acts such masters cannot do themselves. (See Contracts).

(d) Independent Contractors.

A contractor is liable for all wrongs or injuries done to persons by his servants, but the employer who lets the contract to the contractor is not liable for such wrongs, etc., done to persons by the contractor's servants unless such employer gives these servants orders and controls their action.

Enticing Away a Servant.

Any person who induces by promises, persuasion or otherwise any servant to break his contract of service may be sued in an action for damages by the master of such servant.

Injury or Death of Servant.

Where a servant is injured or dies as a result of the negligent act of another person that person is liable to the servant (or if dead the servant's representatives), and to the master for the master's loss of the services of the servant.

Servant's Liability for his own Wrongs.

While the master is liable to persons who suffer injury to their persons or property through the acts of the servant, the servant also is personally liable for those wrongs. He also is liable to punishment for his own crimes whether or not they were committed by him while engaged in his master's business.

Rights of Servant Against Other Persons.

A servant may sue and recover damages against any person injuring him or any person inducing the master to break his contract of service with the servant.

MECHANICS' LIENS.

A MECHANIC'S Lien law gives contractors, builders, materialmen, laborers and all others who furnish either materials or services in the erection or improvement of buildings upon lands a charge against the property for such material or services supplied. There is no Mechanic's Lien Law in England, but such a law is in force in each province of Western Canada; many of the provisions are common to all the provinces.

The right conferred by these statutes is a charge on the property similar to that given by a mortgage and is prior to any charge, except one already existing when the work is commenced. The right being conferred by statute it is necessary to comply strictly with the statutory provisions, especially as to the manner in which and time when liens are registered. Failure to file the lien or to bring action within the time specified renders the lien null and void.

Forms of liens for each province may usually be obtained from the Registrars of Land Titles Offices. Absolutely strict compliance with the forms is not required but full information required in the forms should be supplied. These can be properly filled out without the services of a solicitor, provided the directions in the forms

are followed, but liens are enforced by bringing an action in court and legal services are then required.

The following rules are in force in each of the Provinces of Alberta, British Columbia, Manitoba and Saskatchewan.

Materials.

In order to be subject to a lien, materials must be so worked into a building as to be incapable of being removed without injury to the building, e.g. lumber, bricks, etc., used in the construction of the building and such permanent fixtures as furnaces, sewer pipes, baths, etc.; but not electric light or gas fixtures which may be removed and sold without injury to themselves or the building. Until materials supplied for the construction of a building are worked into it, it is doubtful if a lien can be claimed upon the buildings. But if the goods are sold direct to the owner of the building, a lien may always be claimed.

Persons Entitled to Lien.

Contractors, sub-contractors, persons supplying materials to be used in the building (but not persons employed in the manufacture of such material), and laborers employed by the owner, contractor or sub-contractor are entitled to a lien.

Priority.

A lien comes before all mortgages registered after the lien is registered and before all executions, attachments, assignments, garnishments or receiving orders registered after the lien arises, although it has not been registered.

When Lien Arises.

A lien arises when labor is commenced or when materials are placed on the premises.

How Time Runs for Filing Lien.

The time within which the claim of lien must be registered begins to run, for materials, from the day when the last materials are placed on the premises; and, for labor, from the day the last day's labor is done, and for a

contractor or sub-contractor from the day his work is finished. Liens cannot be kept alive by doing unnecessary work after the work really required is completed, but will be kept alive by doing additional necessary work when such work is ordered by the owner or contractor.

Taking Security.

Taking security for a lien, the acceptance of a promissory note, the taking of an acknowledgement of claim, the giving time for payment or the recovery of a personal judgment have no effect so as to make void the lien, unless the lien holder agrees it shall have such an effect.

Personal Action.

If for any reason a lien holder has lost his lien or has failed to recover under it he still has a right of action against the owner of the property.

Land to Which Lien Applies.

A lien covers all of the owner's interest in the land occupied by the building upon which the work was done or enjoyed in connection therewith.

Mortgaged Lands.

Land already covered by a mortgage or agreed to be sold when a lien is registered is subject to such lien only to the extent to which the premises have increased in value by reason of the material supplied or work done for which the lien is claimed.

Insurance Moneys.

If while a building is in course of construction or before liens against it are all satisfied the building is destroyed by fire the insurance moneys take the place of the building for the benefit of the lien holders.

Limit of Lien.

Liens cannot attach to any building or structure so as to render the owner liable for any amount greater than the sum due to him by the contractor.

Notice.

As soon as material is supplied or work performed on a building subject to a lien, notice of such material or work should immediately be sent to the owner or superintendent, (in British Columbia the limit of time for sending such notice is ten days) as the owner is only liable to the extent that he is indebted to the contractor at the time of receiving such notice. Each following notice should show the balance then due in respect of the lien. The lien holder will be bound by the amount shown to be due in such notice.

Wages.

Mechanics and laborers have in Alberta and British Columbia a prior lien for six weeks' wages and in Manitoba and Saskatchewan a prior lien for one month's wages. These liens come prior to other liens and no device can defeat them. For additional wages the surplus after other liens have been satisfied will be available.

Minimum Lien.

No lien may be filed for an amount less than \$20.

Removal of Materials.

Materials furnished must not be removed from the premises. They can not be seized in execution by any creditor of the furnisher or by anyone else except the furnisher himself, who has a lien upon such materials for their purchase price until they are worked into the building, when his lien attaches to the building.

Enforcement of Liens.

In order to preserve a lien and keep it alive action to enforce it must be brought as follows: (British Columbia) within thirty-one days of filing lien, unless the owner consents to a longer period: (Manitoba) within ninety days after the time for filing a lien commences to run: (Saskatchewan) within thirty days after a notice is served upon lien holder calling upon him to commence action. In Alberta the lien holder is not obliged to begin an action to enforce the lien until the owner of the land

affected serves him with a notice to do so, then unless within 30 days from service thereof the lienholder begins the action and files in the Land Titles Office a certificate of the commencement of such action the lien is lost. These actions are carried on in the superior courts of each province, all lien holders in respect of the same building are required to consolidate their liens into one action to save costs. The action is carried on in a manner similar to other actions. The trial determines the rights of all parties and frequently the property is ordered to be sold to realize the amount of the lien. Either prior to or immediately after the filing of a lien the matter should be placed in the hands of a solicitor in order that action may be brought within the time required unless the lien is in the meantime paid.

Cancellation of Liens.

A lien ceases to exist:—

(1) If a claim of lien is not filed within the time mentioned in the statute of the Province in which the property is situated.

(2) If action is not brought within the time limited in such statute.

(3) If the owner pays the money due under the lien.

(4) If the property is sold and the lien satisfied, or the property is foreclosed.

(5) If the lien holder withdraws the lien.

(6) When a receipt or certificate to the effect that the lien is satisfied is filed in the Land Office in which the lien is filed.

In the following paragraphs under each province are given the provisions which differ in that province from those of other provinces.

Alberta.

To What Class of Structure Lien Applies.

A person doing work upon or supplying materials for the construction, erection, alteration, repairing or addition to any building, erection, tramway, railway, wharf, bridge

or other work, or for the clearing, excavating, filling, grading, track laying or irrigating of any land in respect of a tramway, railway, mine, sewer, drain, ditch, flume or other work or for the improving of any street, road or sidewalk adjacent thereto, is entitled to a lien for the amount actually owing for such labor performed or material supplied.

Contracting Out of Act.

Any person may agree in writing, but not otherwise, to abandon his lien, but no person can lose his lien by reason of an agreement to which he was not a party.

Responsibility of Owner.

An owner of lands and buildings is responsible for the cost of all buildings erected thereon or improvements made unless within three days after learning of the work he posts a notice on the lands or buildings that he will not be responsible therefor. The owner is not, after the posting of such notice, responsible for any work performed on the lands or buildings.

Registration.

All persons entitled to a lien must within thirty days after the time for the registration of the lien commences to run, file in the Land Titles Office of the district in which the land is situated or the office of the clerk of the Supreme Court of the judicial district in which the lands are situated a lien affidavit in the form prescribed in the act. These forms may be had from the Registrar of the Land Titles Office Registration District.

Payrolls.

Contractors are required to post up pay rolls between 12 a.m. and 1 p.m. on the day after pay day showing the amounts paid each laborer engaged on the work and his receipt for same. Unless this is done, in all contracts over \$500 the contractor and sub-contractor will not be entitled to receive any payment in respect of the contract.

Distribution of Moneys.

Where the property upon which liens are claimed is sold under the proceedings in the act, the proceeds are distributed as follows:

- (1) Payment of all sorts of lien holders.
- (2) Six weeks' wages of all laborers employed by contractor or sub-contractor.
- (3) Amounts owing for materials furnished.
- (4) Amount due sub-contractor and other employees of the owner and contractor.
- (5) The amount due the contractor.
- (6) Any balance due laborers over six weeks' wages, and what is then left goes to the owner.

Liens for the Improvement of Chattels.

Any mechanic who does such work upon a chattel as the repairing, painting, etc., of machinery or carriages, motor cars, etc., may if he has not been paid for three months sell the article after giving two weeks' notice in a newspaper advertisement, in a newspaper published in the city, town or judicial district in which the work was done or if there is no newspaper in such city or town then in the nearest newspaper. The advertisement must set out the name of the person indebted, the amount due, description of the chattel to be sold and the time and place of sale. The mechanic shall apply the amount realized to his own indebtedness and pay over the balance to the owner. The mechanic should, however, first ask the Court for an order permitting him to sell.

British Columbia.

The law of this province resembles that of Alberta.

To What Class of Structure Lien Applies.

The provisions are the same practically as those of Alberta except that the lien does not apply to work done on a public street or for a municipality.

Contracting Out of Act.

No laborer can by entering into a contract lose the benefit of the Act, but this does not apply to managers,

officers or foremen or those receiving more than \$5.00 per day.

Responsibility of Owner.

Owners of lands are responsible for works erected thereon and for all improvements upon buildings unless they post in two conspicuous places on the works, notices denying responsibility or notify in writing the person claiming a lien for work done.

Information to be Supplied.

Lien holders may apply to the contractor or owner for particulars of the contract with the contractor and also the owner may apply to the lien holders or contractors or sub-contractors for particulars of the contract under which they claim a lien and unless replies are sent by persons from whom the information is required to persons requiring it or if false replies are sent they will be liable for any loss occasioned thereby.

Assignment.

Assignment by a contractor of moneys due under his contract will not defeat a lien holder.

Registration.

The act supplies a form for registration of lien-affidavits. The lien affidavit in the form given must be filed in the Registry Office of the county in which the land is situated within thirty one days from the time the lien commences to run.

Payrolls.

Same as in Alberta.

Distribution of Money.

Same as in Alberta.

Liens for Improvement of Chattels.

Same as in Alberta.

Saskatchewan and Manitoba.

The lien laws of these two provinces are very much alike.

To What Class of Structure Lien Applies.**(a) Saskatchewan.**

A person supplying material (it is only necessary to show that the material is to be used in the building) for or doing any work in connection with the making, constructing, erecting, filling, altering, improving or repairing of any erection, building, wharf, pier, bulkhead, bridge, trestlework, or mine has a lien upon it, and the land occupied by it to the extent of the amount due and owing to such person.

(b) Manitoba.

A person performing any work or labor for or supplying any materials to be used in the constructing, erecting, altering, improving or repairing any erection, building, land, wharf, pier, bulkhead, bridge, trestlework, mine, vault, well, excavation, sidewalk, paving, fountain, fishpond, drain, sewer, aqueduct, road bed or way, has a lien on such erection, etc., and the lands occupied by it to the extent of the amount due and owing to such person.

Contracting Out.

No person by his own contract can lose the benefit of his lien and no person entitled to a lien can lose the benefit of it by a contract to which he is not a party.

Leasehold Lands.

If the building is upon leasehold lands the owner of the lands will be bound by the lien if he signs the lien at the time of filing.

Percentage to be Deducted by Owners.

An owner must retain 20% of amount due to contractors (in Manitoba where the amount of the contract exceeds \$15,000 only 15% need be retained) until thirty days have elapsed after the completion of the contract. This money may then be paid out unless actions are brought upon the liens. The money retained will be available for all lien holders. Owners may pay lien holders directly and upon notifying the contractor charge such payments to him.

Priority.

Laborers have prior liens for a month's wages. All others share equally, no lienholder being paid prior to others.

Registration.

Lien Affidavits in the form prescribed must be filed in the Land Titles Office of the district in which the land is situated in Saskatchewan and Manitoba, and in Manitoba where the land affected is under the old system (see Chapter on Titles to Land) in the Registry Office in which the land is situated. Registration must be effected within thirty days after the lien commences to run.

Lienholders may at any time demand from the owner or his agent particulars respecting his contract with the contractor.

Liens for the Improvements of Chattels.

These provisions are the same as those in Alberta except that one month's notice of sale must be given and, where there is no newspaper within ten miles of the place where the work is done, five notices must be posted up in the locality. The auctioneer must be named in the notice. Such notices must be left at the last known place of abode of the owner.

MORTGAGES (LAND).

FORMERLY a mortgage was a conveyance of land by a borrower to a lender of money on condition that if on the date fixed for repayment the borrower repaid the money the lender would reconvey the land to the borrower. In the meantime the lender had legal title to the land.

It is now expressly provided in the Land Titles Acts of Alberta, Manitoba and Saskatchewan, that the land mortgaged shall be only a security for the debt and the title remains with the mortgagor.

Parties to a Mortgage.

(a) The mortgagor—The borrower who gives the mortgage as security for a debt.

(b) The mortgagee—The lender, to whom the mortgage is given.

Land Titles Acts.

The law as to registration, assignment, discharge and remedies on default of mortgages is contained in the Land Titles Acts of Alberta, Manitoba and Saskatchewan. In Manitoba the Land Titles Act applies only to lands brought under it, lands not brought under it are under the old system. In British Columbia an act respecting land titles somewhat similar to the acts of the prairie provinces is in force in respect of lands brought under it. (See chapter on Land Titles). The following paragraphs apply to Alberta, Manitoba and Saskatchewan.

Kinds of Mortgages.

(a) **Legal or Statutory Mortgages.**

Mortgages in writing which when registered create a valid charge against any further dealings with the lands.

(b) **Equitable Mortgages.**

Mortgages created by the mortgagor doing something which manifests an intention to pledge his land as security for a debt, e.g., depositing his title deeds, certificate of title, &c., with his creditor and agreeing to charge the land with the repayment of the debt. As these mortgages are not necessarily in writing they are only good as between the mortgagor and mortgagee and have no validity against any person dealing with the land without notice of such equitable mortgages.

The provisions of the Land Titles Acts of each province must be strictly followed. Otherwise the instruments will not be accepted for registration and will have no validity. For this reason, in the making, discharge, etc., of mortgages the services of a solicitor should always be secured.

Statutory Mortgages.**Form.**

In each of the Land Titles Acts a form is prescribed which must be followed. The Mortgage must contain— (1) Date of mortgage. (2) Names of Mortgagor and Mortgagee with complete descriptions. (3) Accurate description of the lands to be mortgaged. (4) Amount of indebtedness. (5) Terms of repayment. (6) Covenants contained in mortgage. The Mortgage must be signed by the mortgagor in presence of a witness who makes an affidavit of execution.

Encumbrances.

Another form is prescribed for instruments in the nature of mortgages, i.e., where the land is charged as collateral security for the payment of something other than a debt, e.g., a legacy or annuity.

Registration.

When the mortgage is properly executed it should be registered immediately in the Land Titles Office of the Land Registration district in which the land mortgaged is situated. The duplicate certificate must always accompany the mortgage. The registrar enters on the duplicate certificate a memorandum of the mortgage and retains a copy of the mortgage and the duplicate certificate of title in trust for all parties until the mortgage is discharged. The registrar will at any time furnish a certificate of charge. Where a person owning land wishes to charge it with a mortgage but the duplicate certificate of title cannot be located, or the patent has not been issued from the Crown the mortgage should be annexed to a caveat and filed.

Transfer of Mortgages.

Mortgages may be transferred (assigned) in part or in whole in the form prescribed in the act. Such transfers of mortgages must be registered in the same way in which mortgages are registered.

Discharge.

Mortgages may be discharged by filing with the Registrar with whom the mortgage was filed a discharge or receipt in the form set out in the Land Titles Act of the province in which the land is situated. The discharge must be signed by the mortgagee and attested by a witness and must show the debt to have been partially or wholly paid off. The Registrar then enters a memorandum on the certificate and duplicate certificate of title showing the land to be partially or wholly discharged.

Mortgagee Absent When Debt Due.

If the mortgagee is absent when either principal or interest falls due and there is no one authorized by power of attorney to receive payment, the money due may, in Manitoba, be paid to the Provincial Treasurer; in Alberta or Saskatchewan, application must be made to a judge who if he sees fit will direct that it shall be paid into a chartered bank. The Registrar upon satisfactory evidence that this has been done enters a memo on the certificate of title that the mortgage has been discharged, upon which interest on the amount due ceases to run.

Remedies of Mortgagee When Mortgagor Makes Default in Payment.

(As these proceedings must be carried on through the courts or the Registrar of Land Titles a solicitor must of course be employed).

When the mortgagor fails to pay principal and interest or interest only when due the mortgagee has in Alberta, Manitoba and Saskatchewan the following remedies:

(a) By Action in the Courts.

He may bring action in court (the amount of money involved will determine which court) on his mortgage claiming payment of the debt and interest and costs or failing that sale or foreclosure.

A writ is issued and copies are served on all parties interested in the mortgaged lands e.g. second mortgagees, execution creditors, mechanic's lien holders, etc., and, usually 20 days after the service of the writ, a Judge grants

an order, called an order *nisi*, giving the mortgagor or any party interested three months from the date of service upon them, to redeem the mortgage by paying the full amount due with interest and costs. If at the end of three months this is not done the Judge gives an order for the sale of the property by public auction on a day named. The sale must be well advertised by advertisements in local newspapers and posting of bills, the conditions of sale are also settled, the auctioneer is specially instructed and a reserve bid is fixed. Under certain circumstances the Judge may allow a private sale.

If the auction sale proves unsuccessful, no bid being received equal to the reserve bid, an order for foreclosure is generally granted. Such order gives the holder of it a clear title to the land. If a sale is effected the purchaser pays a deposit of 10 per cent. of the purchase price and terms are arranged for the balance. An order is then applied for to confirm the sale, and this order gives the holder of it a clear title to the land.

(b) By Notice under Power of Sale.

The last mentioned proceedings are carried on under the direction of a Judge. In Alberta the following proceedings may be taken. They are supervised by the Registrar of the Land Titles Office of the district in which the lands are situated, and are similar to the foreclosure and sale proceedings described but are possibly a little less costly.

Under these proceedings when a mortgagee fails to make payment of principal and interest or interest alone for one month the mortgagor serves a notice on him and on all parties interested in the mortgaged lands, e.g. second mortgagees, mechanic's lien holders, etc., calling upon the mortgagor or any person interested to pay the amount due by a day named. If payment is not made as required the mortgagee under the direction of the Registrar proceeds to offer the lands for sale by public auction or private sale as seems advisable. The procedure with respect to sales is the same practically as in foreclosure actions described in (a).

If no sale is effected the mortgagee applies for a foreclosure order but will not be given such an order until the mortgagor has been six months in arrears of payment. This order when obtained gives the holder of it a clear title to the land.

(c) Distribution of Proceeds of Sale.

Moneys realized upon sales are distributed as follows: (1) payment of costs, (2) payment to mortgagee of his claim and interest, (3) persons interested in the lands such as second mortgagees, execution creditors, lien holders, etc. (4) the surplus if any to the mortgagor.

If enough is not realized upon the sale to pay the mortgagee's claim with interest and costs the mortgagee may have a personal judgment against the mortgagor for such deficiency.

(d) Right to Rents.

The mortgagee has additional remedies of entry upon the mortgagor's lands to receive the rents and profits and may distrain in the same way as for rent.

British Columbia.

Where lands have been brought under the Land Registry Act of British Columbia mortgages may be registered in a manner somewhat similar to that required in the prairie provinces.

Proceedings on mortgages in default are carried on by actions brought through the courts claiming payment of the mortgage debt or sale and foreclosure.

The mortgagor may at any time during the proceedings in the action offer to pay the full amount due with interest and costs whereupon the proceedings shall be discontinued and the mortgagor completely discharged.

NATURALIZATION AND ALIENS

Definitions.

AN alien so far as Canada or the British Empire is concerned is any person who is not a British subject.

Every person born within the British Empire is a British subject, regardless of the nationality of his parents, and every person born without the British Empire whose father was at the time of such person's birth a British subject is a British subject. Persons of both of such classes cease, however, to be British subjects if they become citizens of another nation.

Naturalization.

Naturalization is the process whereby an alien becomes a British subject.

Residence and Nationality.

A person may change at will his or her residence or legal domicile from one country to another country under a different flag, but no person can change his nationality at will. In order to divest oneself of citizenship in one country and acquire citizenship in another, certain forms of law must be gone through and the change of nationality from one country to another even where the legal requirements are carried out is only accomplished at the will and permission of such states.

The law as to naturalization of aliens is contained in two Statutes of Canada, one known as the Naturalization Act of 1906 and the other the Naturalization Act of 1914. Naturalization may now be obtained under either Act in the case of aliens who became resident in Canada up to January 1st, 1915. But after January 1st, 1918, no alien may be naturalized under the earlier Act.

Rights of Aliens.

(The rights of alien enemies are discussed at end of this chapter.)

Aliens may buy and hold real and personal property of every kind and description, but no alien may own a

share in a British ship and they may also sue or be sued in the courts of the Province. But they may not sit on juries or hold offices in the Dominion or Provincial Government or in those of a municipality and they cannot vote. They cannot obtain patent to homestead lands except in certain cases (see chapter on Homestead and Pre-Emption). An alien is liable to punishment for crime in the same way as a British subject.

Natural Born British Subjects.

Under this class are persons who:

(a) Were born anywhere within the British Empire. (It makes no difference whether the parents were British subjects or aliens.)

(b) Were born outside the British Empire but whose fathers were British subjects.

(c) Who were born on a British ship in any waters.

Naturalized British Subjects.

These are persons who were either born aliens or became such but have become naturalized British subjects by complying with the conditions mentioned below.

Position of Wives and Children.

(a) Wives.

The wife of a British subject becomes a British subject upon marriage even though she was an alien previous to marriage, and when a woman who is a British subject marries an alien she becomes upon marriage an alien. The husband's death does not in either case alter the nationality she had while he was alive.

(b) Children.

Children of a British subject who ceases to be a British subject while they are under 21 thereupon cease to be British subjects, unless by the law of the country in which the father has become naturalized the children do not thereupon become subjects of that country. Any child so ceasing to be a British subject may within one year after coming of age make a declaration that he wishes to become a British subject. After making such a declaration he

thereupon becomes a British subject. The children of a widow are British subjects, they do not cease to be British subjects on the marriage of their mother with an alien.

Expatriation.

This means losing one's nationality. British subjects may lose their nationality as follows:

(a) Any British subject who becomes naturalized in any foreign country ceases to be a British subject.

(b) Any person who by reason of being born in the British Empire or on a British ship is a natural born British subject but by the law of some foreign states is also a subject of such foreign state may make a declaration of alienage upon coming of age and shall thereupon cease to be a British subject.

(c) Any person who is a natural born British subject but was born outside of the British Empire may after coming of age make a declaration of alienage and shall thereupon cease to be a British subject.

(d) A naturalized British subject by making a declaration of alienage may thereupon become again a subject of the foreign state of which he was a subject if that foreign state happens to have made an arrangement to that effect.

Upon ceasing to be a British subject a person does not cease to become liable in respect of obligations and duties incurred before losing British nationality.

The declaration of alienage referred to above is made before a notary. Particulars with respect thereto may be obtained from the Clerk of the Court where naturalization papers are handed in as hereinafter described.

Naturalization Under the Act of 1906.

(Note carefully any alien who became resident in Canada at any time up to January 1st, 1915, may, before January 1st, 1918, become naturalized under this method of procedure. Any alien becoming resident after January 1st, 1915, must become naturalized under the method of procedure provided in the Dominion Naturalization Act of 1914, described below.)

Time Required for Naturalization.

Any person who has resided in Canada for three years or who has been in the service of the Crown (Government) for three years and who intends after naturalization to reside in Canada or to serve under the Government of Canada may apply for naturalization.

Procedure.**(a) Oath of Allegiance etc.**

After the alien has resided in Canada for the required time he must take the oath of allegiance before a Judge of any Court, a commissioner for taking oaths, a Justice of the Peace of the county or district where the alien resides, a Notary Public or a Police Magistrate, who may require such alien to bring forward evidence as to residence or service and intention to reside or serve.

(b) Certificate.

If the Judge, Commissioner, J.P., etc., before whom the alien takes the required oath finds everything in order, he grants a certificate to the alien so applying.

(c) Presentation of Certificate.

This certificate must be presented to the Judge of the particular Courts of the Provinces mentioned below, three weeks before the sittings of these Courts. The alien applying must notify the Clerk of such Court of his intention to present the certificate at the next sittings and give his name, residence and occupation (for Form of Notice apply to Clerk of Court). The Clerk thereupon posts a list mentioned below of all aliens who intend to apply for naturalization at the next sittings of the Court.

Objections.

Any person objecting to any of such aliens becoming naturalized may file with the Clerk his objection and his reason for so objecting.

Presentation to Judge.

Such certificates are presented to the Judge of the following Courts.

British Columbia.

Certificates are presented to the Supreme Court of British Columbia during its sittings in the electoral district in which the alien resides or to the circuit Court during its sittings in that district or to the County Court of such district.

Alberta and Saskatchewan.

To a Judge of the Supreme Court in Chambers in the Judicial District in which the alien resides.

In Manitoba certificates are presented to the County Court of the County in which the alien resides, or if no County Court there then to the County Court of the Court nearest to where the alien resides.

Certificate of Naturalization.

On the opening days of the sittings of the Court to which the certificates are to be presented the Judge announces the application with name of applicant, etc. At the last day of the sittings, no objection having been filed or, if filed, disposed of, the Judge orders the certificate to be filed in the records of the Court. The alien applying is thereupon granted a certificate of naturalization and he thereupon becomes a British subject.

Rights of Naturalized Alien.

Any alien so obtaining a certificate of naturalization thereupon becomes entitled, while he is in Canada, to all rights, powers and privileges held and enjoyed by natural born British subjects, but he is not a British subject when he is outside the borders of Canada. All children who before attaining the age of 21 come to Canada to reside with parents who have become naturalized also become thereby British subjects.

Re-Admission of Former Subjects.

Any British subject who loses his nationality and becomes an alien may be re-admitted as a British subject in the same way as an alien becomes a British subject, except that the term of residence required in Canada is three months instead of three years. Children of such former

British subject who is so admitted become British subjects if they come to reside with their parents in Canada before the age of 21.

Penalty for False Statements.

Persons making false declarations respecting applications for naturalization in addition to incurring criminal punishment may lose all rights to become naturalized British subjects.

Naturalization Under the Dominion Naturalization Act of 1914.

(Note carefully the remarks at the bottom of page 299 above. All aliens becoming resident in Canada after January 1st, 1915, must become naturalized under this Act).

(a) Time of Residence etc.

Under this Act there must be five years residence in the British Empire or of service under the Crown, instead of three years as under the earlier Act, but at least the one year just previous to applying must have been spent in Canada, residence in any other part of the Empire for the other four years is sufficient. The alien applying must have an adequate knowledge of either the English or French language, be of good character and must intend after naturalization to reside in the British Empire or serve under the Crown.

(b) Procedure.

Application for naturalization is made as follows:

(1) Notice of Application.

Three months previous to applying to the Court the alien must send in an application to the Clerk of the Court before which he intends to appear. Such application is posted up in the Clerk's Office. The applicant must also post up a copy of his application in the Post Office nearest to his place of residence. (For Form of such Notice apply to the Clerk of the Court to which the application is to be made).

(2) Objections.

If any person objects to such alien becoming naturalized he must file his objection with the Clerk of the Court sometime before the application is heard.

(3) Application.

Three months after sending to the Clerk such application and posting it up in the Post Office the alien applying must appear before the Judge of the Courts mentioned on page 301 above and produce such evidence as the Court requires that he is qualified and fit to be naturalized, and he will only be excused from attending where there is very good reason for his not doing so.

(4) Certificate.

In case the Judge of the Court to which the alien is applying is satisfied that the alien applying is a fit and proper person to be naturalized, he forwards his decision and the application to the Secretary of State for Canada, and thereupon if the Secretary of State deems it advisable, but at his absolute discretion, he grants a certificate of naturalization which is forwarded to the Clerk of the Court to which the application was made. Before such certificate of naturalization is delivered to the alien applying, he must take the oath of allegiance.

(5) Rights.

By this certificate the naturalized British subject is entitled at all times and in all parts of the world to all the rights, and is subject to all the liabilities, of a natural born British subject.

(6) Children.

Minor children of the alien applying who were born before the certificate of naturalization is granted, may be included in such certificate. They thereupon become British subjects, but they may, within one year after attaining the age of 21 years, make the declaration of alienage above mentioned and they thereupon cease to be British subjects.

(7) **Minors.**

Persons under 21 years of age may secure a certificate of naturalization in the same way as adults.

Alien Enemies.

Alien enemies are all subjects of a country with which the British Empire is at war. All dealings with alien enemies are forbidden, but it is customary for the Government, as has been the case in this war, to grant certain privileges to alien enemies living in this country, provided they are law abiding and peaceful. But unless an alien enemy is one of this privileged class any contract made with him is illegal and subjects the other person to it to fine and imprisonment, and the right of such alien to enforce contracts made before the war is suspended until peace is declared.

PARENT AND CHILD

Infants or Minors.

IN the eyes of the law all persons are infants who are under the age of 21 years, another term used is minors. The law concerns itself with the word "Child" only when it is used to identify some person or persons referred to in an instrument, e.g. a will.

Liability for Contracts.

(See chapter on Contracts).

Liability for Wrong and Crime.

Infants are liable for wrongs and crimes committed by them after they attain an age when they can distinguish between right and wrong. This age is never younger than seven years. After the age of seven years they are generally wholly accountable for civil wrongs committed by them, but between the ages of seven and fourteen they may be convicted of crime only when it is shown that they were conscious of the nature of the act and knew that it was wrong.

Things Infants Cannot Do.

Infants cannot vote at an election, hold a public office of any kind or serve on a jury. They cannot appoint an agent or be liable on contracts, except for necessities, or contracts under which they acquire property, such as real estate or shares in a company which they retain. They cannot contract a loan, be liable on a bond or give a valid note or bill or a valid receipt or release of a legal claim. They cannot make a will.

Things Infants Cannot Do in Part.**Executor.**

An infant may be appointed an executor or trustee but may not act in that capacity until he attains the age of 21 years.

Partners.

An infant may be a partner but will not be liable for the firm's debts until he attains the age of 21 years. He may then leave the partnership, but unless he then does so he will be liable as a partner.

Things Infants are Competent to Do.

An infant may take an oath, i.e. make an affidavit or take the oath of allegiance.

For the rules governing a marriage entered into by an infant see the chapter on Husband and Wife.

An infant may be an agent but cannot appoint one (see chapter on Agency). He may hold shares in a company if its charter so permits but may not be liable thereon until he attains the age of 21 years.

An infant may enter into contracts of partnership of service with a master or for necessities. As to contracts by infants see chapter on Contracts.

Infants' Property.**(a) Goods and Chattels.**

Infants may purchase and hold such goods as are necessities for them and they are liable for the purchase price thereof, but they are not liable for such goods unless the goods are really necessities.

(b) Real Estate.

Infants may acquire and hold real estate whether they receive it by gift or exchange. At any time before they come of age they may refuse to hold the property, in which case the realty goes back to the persons from whom the infant received it. If the minor does not return such realty upon reaching the age of 21 years, he will be compelled to retain it.

Infants may also sell or otherwise dispose of realty held by them, but are not bound by such sale, and may at any time before they attain 21 years of age change their minds and refuse to be bound to convey such property. In short no sale or other disposition of lands by a minor is binding upon him. An infant is absolutely incapable of giving a mortgage or of binding himself as a lessee. If an infant becomes a lessee he is not bound to perform any of the covenants of the lease. If, however, he keeps the benefit of the lease until he becomes of age and then does not disaffirm it he will be liable on it from the beginning.

(c) Guardians.

An infant's real property is usually placed in the charge of guardians of such infant. The guardian is usually the father or, if he is dead, the mother or, if both are dead, the Court may appoint some other persons to be guardians to the infant. The Court may in any case, where it sees fit, appoint persons guardians of infants who own or have property. The infant's property may be sold if the Court permits, where the funds from such sale are required for the education of the infant or his maintenance, but will not be sold if the father is able to maintain him. Otherwise no minor's property may be disposed of until he is 21 years of age.

In the appointment of a guardian the wishes of the parents should be followed unless they have by their conduct prevented themselves from having charge of the children. A guardian has, as to the person of the infant, complete charge and control and, where consent is necessary for marriage, is the person to give that consent. The

guardian also, under the control and direction of the Court, provides for the education, bringing up and marriage of the infant, and has also, under the direction of the Court, charge and management of the infant's property.

Rights and Duties of Parents.

(a) Rights of Father.

A father has a right to the entire control and charge of his children until they attain the age of 21 years, or in the case of daughters until they attain the age of 21 years or marry. The father has the right to the services of such child and may control and correct the child to a reasonable extent.

The court may at any time on the application of the mother of an infant appoint some one in place of the father to take charge of the child. This will only be done where the father is guilty of cruelty to the child or mother, or has faults which the court considers endanger the proper training and education of the child. Except in such cases the father has a similar right to his children under 21 years of age, even against the mother, unless he relinquishes such rights in favor of the mother or some one else.

(b) Rights of Mother.

Where the father is alive the mother has no right to have charge of the children, as against the father. Upon the father's death she has all the rights above told, either alone or along with any guardian appointed by the father, unless she has by her conduct rendered herself unfit to attend to such duties.

(c) Loss of Rights by Parents.

For sufficient reasons the court may prevent the infant's parents having control of such infant and, if the infant is of sufficient age to decide, he will not be compelled to return to his parents where they have so misconducted themselves. After divorce or other separation by law, the court decides which parent the children are to be placed in charge of.

Guardian.

In Alberta a father may appoint by his will some person to be the guardian.

Adoption. (Alberta).

Any adult person or a husband and wife jointly may petition the Court to be permitted to adopt any child and the Court if satisfied that such persons are fit and proper persons to be entrusted with such child, may allow them to adopt it. Unless the Court dispenses with consent, the following persons must give their written consent to such order of adoption.

(a) The child when above the age of ten years.

(b) The parents, or the survivor of them, or the parent, guardian or person having charge of the child or, where the child is illegitimate, the mother only.

(c) In case there was a prior adoption, the previous parents by adoption.

(d) Where the child has no parent or guardian, one of the next of kin of the child.

When the court so gives by an order such person or persons the right to adopt such child, the natural parents lose all right and are freed from all liabilities in connection with the care, education and maintenance of such child and the new parents by adoption incur all the responsibilities and acquire all the rights the natural parents formerly had over such child. Such child also acquires the same rights which natural born children of the adopting parent or parents have.

(e) **Religion.**

The father has an absolute right to determine in what religion the child shall be brought up. If he dies without leaving any intimation the child will be brought up in his religion. But if the father's conduct has been immoral or if he allows the child to be brought up in the religion of the mother, or that of some other person, or the child at an age when it is capable of deciding selects any particular religion, the child will be brought up in such other reli-

gion, in opposition to the father's wishes. Only the Christian and Jewish religions are recognized.

(f) Maintenance of Infants and Consent to their Marriage.

(See Chapter on Husband and Wife).

(g) Infant's Real Estate.

The father and mother have no right to deal with their infant children's real estate and may not sell or dispose of same except by the order of the Court. They cannot use the child's property to pay for the child's maintenance or education unless the court permits.

(h) Dealings Between Parent and Child.

Any dealings between a parent and his minor child are carefully scrutinized by the court. Any gift by the child to the parent will be probably set aside, while any gift by the parent to the child will be generally maintained.

Neglected and Dependent Children. (Alberta).

Applies only to children under 17 years of age.

Where children are neglected by parents or left without support or abandoned, they may be brought before a judge who investigates the case. If he finds the child neglected, he may order it to be delivered to the Children's Aid Society of the municipality in which the hearing is held, or if there is no such Children's Aid Society, such child is to be delivered over to the superintendent of neglected children for Alberta, whose duty it is to find a foster home for such child. Such children may be maintained in the temporary home or shelter provided in cities having a population of 10,000 or over for a period of not more than three months. The municipality to which such child is delivered must provide maintenance for the time required, which sum may be recovered from the parents.

Treatment of Child.

Any person who having the charge and care of a boy under 14, or a girl under 16 years of age, ill treats, neglects, abandons or exposes such child or causes such child to be so ill treated in any manner likely to injure the child's

health or cause it unnecessary suffering, and any person who causes the child to beg or to perform or sell in a public place after 10 p.m. or to perform in a circus or neglects the child or is a party to such child becoming a neglected child, is liable to a penalty of \$100 with or without imprisonment.

The Mayor of any city or town or the chairman of a village council may grant a license on application to allow children to perform after 10 p.m. at public entertainments.

Illegitimate Children.

All children born out of lawful wedlock are illegitimate and do not succeed to any share in the father's property should he die without a will. Where in a will a gift is made to the children of the maker of the will illegitimate children do not share. But in Alberta if after the birth of a child born out of wedlock the parents of such marry the child becomes legitimate and will then be considered to have been legitimate from its birth.

PARTNERSHIP

THE law relating to partnership in each of the four Western Provinces has been codified. That means that the law on the subject of partnership as it had been fixed by the decisions of judges has been summarized and in that form passed through the legislature. Partnership law, therefore, in each of the four Western Provinces is to be found in a Statute called The Partnership Act and is practically the same in each province.

What is a Partnership.

A partnership exists where two or more persons, but not more than twenty, carry on a business together with a view to profit the whole business being carried on by all for the benefit of all. Each member of the partnership contributes in equal or in unequal portions, money, labor, skill, care or services in the carrying on of the business,

the profit or loss resulting from such business operations being shared among the persons so banded together in the proportions agreed upon between them. The capital may be supplied by one alone and the skill and labor by one alone or both may furnish both capital and labor.

What are Not Partnerships.

(a) Companies.

Joint stock companies organized under a Provincial or a Dominion Statute are not partnerships. Where more than twenty persons carry on business together they must form a company.

(b) Joint Owners.

Joint or co-owners of property, i.e., those who own property which stands in the name of all of them, but are not engaged in business together for profit, are not partners even though they divide up the profits of the property from time to time.

(c) Persons Receiving Business Profits.

Persons receiving profits of a business are generally partners but this is not necessarily so, and in cases where loans are made to partners and the interest paid to the lender with the profits or where employees are paid a share of the profits in addition to their salary or wages and other cases where persons such as the widow of a partner receives her deceased partner's share of the profits, are not cases of partnership.

Firms.

Persons who have entered into a partnership are styled a firm and the name under which the business is carried on is called the firm name.

How Partnerships are Formed.

Partnerships may be entered into by agreement in writing or by word of mouth. A written partnership agreement is the safest course. So many questions respecting the rights and duties of partners as between themselves arise in the course of the partnership operations that

unless the agreement respecting the partnership has been reduced to writing misunderstandings and disputes can only with difficulty be settled. A solicitor should be employed to draw up the partnership agreement and care should be taken to include in such agreement the length of time the partnership is to continue, the names of all partners and the firm name, the proportions of profits coming to each partner, the duties, responsibilities, etc., of each partner and any other matters concerning which it is desirable to provide.

Who May Enter into Partnerships.

Only persons who may contract may become partners (see chapter on Contract).

Registering Partnerships.

In each province upon a partnership being formed a declaration must be filed in the manner following. These provisions are the same in each province except where stated otherwise.

(a) Declaration.

The firm name and the individual names of the partners must be filed in the office where chattel mortgages and bills of sale are filed of the district where the partnership business is carried on or intended to be carried on, (within six months after the formation of the partnership). In British Columbia the declaration must be filed with the Registrar of the County Court of that county in which the partnership business is carried on (within three months after the formation of the partnership). The declaration must contain the name, surname, occupation and residence of each and all of the partners, the firm name, the time during which the partnership is to exist and that the persons therein mentioned are the only members of such partnership.

(b) Change in Partners.

A similar declaration must be filed in the same office whenever any change takes place in the membership of the firm or in a change in the firm name or in the residence

of any member of the firm and such new declaration must contain a statement of any such changes in the partnership.

(c) Signature.

The declaration must be signed by all of the partners in the presence of a witness who subscribes his name. If any member is absent another member may sign for him under a special written authority, which authority must be filed with the declaration.

(d) Liability of Partners.

Until a new declaration is filed every partner mentioned in the declaration and signing his name thereto is liable as a partner and those whose names are not so mentioned but who are partners are liable as partners and also for the heavy penalties mentioned below.

(e) Individuals Trading as Partnerships.

Where a person carries on his business using some other name than his own or any name indicating several persons such as John Smith Company, Great West Trading Company, etc., when in reality one person only carries on the business such person must file a declaration in writing in the same office and within the same time as partnership declarations are filed. The declaration must contain such person's full name and residence, the firm name under which he carries on business and that no other person is in partnership with him.

(f) Penalties for not Registering.

Every member of a partnership or any person trading alone but using a firm or company name is liable for a penalty of \$100 for failure to file the declaration above mentioned. Any person may commence suit for this penalty and if it is recovered one half goes to such person, the other half to the Crown.

Liability of Partners to Persons not Partners.

(a) For Acts of Other Partners.

It is a general rule that each partner acts for the whole firm and binds all the other partners by his acts done in

connection with the partnership business unless such partner had no authority from the other partners to do the act which he did and the person dealing with him knew he had no such authority. The firm is liable for the acts, representations and conduct of each partner done in the usual course of the partnership business in the same way that a principal is liable for the acts of his agent (see chapter on Agency). The firm is not liable for any acts done by a partner which have nothing to do with the firm's business.

(b) For Losses to Persons not Partners.

When a partner acting in the usual course of the firm's business causes injury and loss to persons not partners both he and the other members of the firm are liable to such persons.

(c) For Debts of Firm.

All of the partnership property is liable for the debts of the firm and whenever the firm property is insufficient to satisfy the creditors of the firm the private property is liable to the full extent of the debts due by the firm.

(d) For Misapplication of Moneys.

When one partner acting in the usual course of the firm's business receives moneys from other persons and misapplies it or where the firm receives moneys of other persons and one of the partners misapplies it the whole firm is liable.

(e) For Trust Moneys.

Where one partner who is a trustee of trust moneys uses the trust moneys in the firm's business, the members of the firm are not liable personally but the trust moneys can be recovered from the firm.

Holding Out to be Partners.

Persons who by words or conduct represent themselves to the public to be partners in any partnership are liable to any persons who give credit to any firm on the faith of such representations although the persons so representing themselves to be partners are not in reality part-

ners and their names do not appear upon the declaration to be filed.

Notice.

Notice of any fact to one member of a firm is good notice to all members of a firm.

Dying and Outgoing Partners.

(a) A Deceased Partner's Estate.

A deceased partner's estate is liable only for such partnership debts as were incurred before that partner's death and not for debts incurred after his death.

(b) An Incoming Partner.

An incoming partner is not liable unless he specifically agrees to be liable for any debts or liabilities of the firm incurred before he became a member but is only liable for debts incurred by the firm after he became a member.

(c) A Retiring Partner.

A retiring partner is liable only for debts incurred before his retirement and may be discharged from liability for those debts by an agreement entered into by all the partners and all the existing creditors.

Partnership Property.

Partnership property must be used solely in the firm's business and not for the private use of any partner. Property bought with the firm's money is deemed to be partnership property.

Rights of Partners.

Partnership rights, duties, etc., are usually provided for in the partnership agreement originally entered into and as varied from time to time by the consent of all partners. **Except where altered by such agreement** the rights of partners are as follows:

(a) Equal Sharing.

All parties must share equally in the capital and profits of the business, contribute equally thereto and bear an equal share of the losses.

(b) Partners Indemnified.

All partners must be indemnified by the firm in respect of payments or expenses incurred by them in the usual business of the partnership and for all amounts contributed to the firm over and above the amount of their shares in the capital. Partners cannot claim interest on capital invested before profits are ascertained, and no partner is entitled to salary or other remuneration for acting in the firm's business, unless of course the firm agrees to pay him such salary.

(c) Management.

Every partner may take part in the management of the business but no new partner may be admitted without the consent of all existing partners.

(d) Disputes.

Differences between partners may be decided by a majority of the partners.

(e) Books of Account.

The books of account must be kept at the principal place of business where the partners may have access to them.

(f) Expelling Partners.

Unless there is an express power in the partnership agreement (to expel a partner) no majority of partners may expel one of the partners.

(g) Partners Accounting.

Partners must render true accounts of the partnership business to any other partner and must account for any private gain they make without the consent of the firm in connection with any transaction affecting the partnership and must also account to the firm for all gains made by them in carrying on any business in competition with the partnership business.

(h) Assignment of Partners.

When a partner assigns or mortgages his share, the assignee of such share acquires no right of interference in

the management of the business or to an account but only to the partner's share of the profits and capital invested.

(i) When a partnership continues after its time has run out, the rights and duties of the partners continue as they were.

Termination and Dissolution of Partnership.

Unless there is a different provision in the partnership agreement, partnerships are terminated as follows:

(1) Where entered into for a certain time by the expiration of that time.

(2) Where entered into for a particular transaction or venture, by the termination of such venture.

(3) Where entered into for an indefinite time, by any partner giving notice to the others of his intention to dissolve the partnership. The partnership is dissolved from the date of service of said notice upon the other partners.

(4) Where a partner dies or makes an assignment for the benefit of creditors, or allows his share to be charged by a creditor, the partnership thereupon ceases.

(5) If any event occurs making it unlawful to continue the business the partnership must be dissolved.

(6) Where the partners of a firm refuse to dissolve the partnership, any partner can bring an action against the firm and compel a dissolution in the following cases, viz:

(a) Where any partner becomes insane or incapable of continuing the partnership business.

(b) Where any partner is guilty of such misconduct as to prejudice the partnership business.

(c) Where any partner breaks any term of the partnership agreement or so conducts himself that the other partners cannot conduct the business with him.

(d) Where the partnership is carried on at a loss or cannot for any other good reason be advantageously carried on.

Registration of Dissolution and Notice.

Upon dissolution of partnership a declaration in the form given should be filed in the same office where the declaration of partnership is filed. It must be signed by all of the partners.

A notice of dissolution must be published for two consecutive issues in the Provincial Gazette. This should be carefully attended to because the firm and each partner will be liable to persons dealing with the firm, who have no notice of the dissolution. After dissolution the authority of each person continues to the extent necessary to wind up the partnership. The partnership is dissolved as soon as the notice dissolving it is served on the partners.

Rights of Partners on Dissolution.

As soon as the partnership has been dissolved in any of the ways above mentioned and the declaration has been filed and the notice published as required, the partnership business should be wound up as speedily as possible. All assets of the firm should be realized upon by sale and outstanding debts, etc., collected in the same way as in the winding up of a company or the estate of a person deceased, or one who has made an assignment for the benefit of creditors.

The assets so realized are distributed as follows:

First, in paying debts and liabilities of the firm to persons who are not partners.

Second, in paying to each partner what is due to him for loans to the partnership.

Third, in paying back to each partner the capital originally contributed by him.

Fourth, the balance, if any, should be divided among the partners in the proportion to which they are entitled to profits.

In case the firm is insolvent, not only will there be no funds to be divided among the partners, but each partner will be required out of his own private means to satisfy all the debts of the firm. In the case of a partner dying

and the other partners continuing the business the partnership is liable to the executors or administrators of such partner for his share of capital and profits.

Limited Partnerships.

A limited partnership is one in which there are two classes of partners.

(a) General Partners.

Who manage and control the business and are liable for all of the firm's debts like other partners.

(b) Special Partners.

Those who contribute capital but have no say in the management of the partnership business and are liable only for the amount they have agreed to contribute to the firm in the same way and to the same extent to which shareholders in a company are liable.

Formation and Registration of Limited Partnerships.

The partnership agreement should set out all the terms of such a partnership. A certificate of limited partnership in the form given herein must be filed where declarations as to ordinary partnerships are filed. It must be signed by all of the partners.

Such declaration or certificate must contain the following:

- (a) Firm name of partnership.
- (b) Nature of firm's business.
- (c) Name in full with residence and occupation of all general and special partners, distinguishing the two classes.
- (d) The amount of capital each partner has contributed.
- (e) Date of commencement and termination of partnership.

Such limited partnership will not be considered to have been formed until the above certificate is registered and if the partnership is continued beyond the time men-

tioned in the certificate or any change occurs in the partnership without a new certificate being filed setting out such change, if any, the limited partnership will become a general partnership and all partners be liable as ordinary partners.

Firm Name.

Only the names of general partners may appear in the firm name. If the names of special partners appear therein, they will be considered general partners.

Profits.

Limited partners may only receive profits in addition to interest on the capital they invested when such payment of profits does not impair the capital.

Interference in Firm's Business.

A limited partner may inquire into and advise as to the firm's business, but he may not transact any of the firm's business or act as agent or attorney or otherwise for the firm, and if he does so he will be held liable as a general partner.

General partners must account to the firm, including special partners, for their management of the firm's business.

Insolvency.

In case of the insolvency of the firm creditors are paid first out of assets in preference to special partners.

Dissolution.

Dissolution of the partnership before the time it is to expire takes place in the same manner and under the same circumstances as in the case of an ordinary partnership.

PEDLARS

Alberta and Saskatchewan.

A PERSON who goes from house to house canvassing or offering any goods for sale, or who carries samples taking orders, must obtain a license from the Government of the Province where the goods are sold. The application for the license should contain a description of the goods to be offered for sale. The license costs \$25. It expires on December 31 each year and must be renewed for the ensuing year. Only goods mentioned in the license may be sold. Persons violating these provisions are liable to a penalty.

In Alberta no Provincial Government License need be obtained for selling by retail meat, fish, fruit, agricultural implements, sewing machines or farm produce; nor in Saskatchewan for meat, fish, fruit or farm produce. Also in Saskatchewan a tinker or a person carrying on the trade of repairing kettles, grinding knives and scissors, or who goes along the highway to carry on business does not require a license. But such persons and also those required to take a Government license may be required to take out a license by the municipality or municipalities in which they carry on business.

Manitoba and British Columbia.

Pedlars are not required to obtain a license from the Provincial Government, but obtain same from the cities, towns, villages, rural municipalities or counties where the goods are to be sold.

PREFERENTIAL AND FRAUDULENT TRANSFERS.

A SOLVENT person is entitled to make a gift of all or any part of his property to any other person or to sell or transfer it for any consideration which he is willing to accept. But where a person is in insolvent circumstances or unable to pay his debts in full or knows that he is on the eve of insolvency and makes a convey-

ance or assignment of any property, real or personal with intent to defeat, hinder, delay or prejudice his creditors or any one or more of them, such conveyance or assignment is void as against the injured creditor or creditors and they may move to have it set aside. Moreover any transfer or conveyance which has the effect of giving a creditor a preference over other creditors may be set aside without proof that the intent of the debtor was a fraudulent one, if the proceeding to set it aside be brought within sixty days of the transaction, or if within such sixty days the debtor makes a general assignment for the benefit of creditors. If the injured creditors delay their attack for more than sixty days they are obliged to prove a fraudulent intent.

If the transfer be a voluntary one, that is without any consideration and the transferor be insolvent at the time the intent to defraud will be presumed. Where valuable consideration is given the attacking creditors must prove a fraudulent intent unless as stated above they take action within sixty days of the transaction, in which case all they need to prove is the insolvency of the debtor and the fact that the transaction injures, delays or prejudices them in collecting the debts owing to them. The law as to fraudulent conveyances was put in the form of statute as long ago as the reign of Queen Elizabeth and has been a subject of much discussion and litigation ever since that time. The law is now covered by statutes of the various provinces which are however but a repetition and extension of those of Elizabeth.

The question as to when a debtor is insolvent has been a particularly difficult one to determine but recent decisions seem to hold that before a debtor can be declared insolvent the judge must find, first, that he was not paying his way, second, that he was unable to meet the current demands of his creditors and third, that he had not the means of paying his creditors in full out of his assets when realized upon by a sale for cash or its equivalent.

RAILWAYS.

THE law respecting Railway Companies, the construction of their lines, rights of way, operation of trains, duties to the public, etc., is contained in the special acts of the legislature or Dominion Parliament incorporating such railway companies and also in the case of railway companies incorporated by the Dominion Government in a statute known as the Railway Act of Canada and in the case of Provincial railways by the Railway Acts of the province which has incorporated the company. A Dominion Railway is one which operates lines through more than one province and Provincial Railways are those whose lines are situate entirely within one province. Certain Provincial railways become Dominion railways by being declared by the Parliament of Canada to be for the general benefit of Canada.

The Railway Commission.

There is a very great difference of opinion as to whether or not a government should own and control railways as a public utility or simply seek to control them by a commission appointed for that purpose.

The Government of Canada has adopted both these courses. It owns and operates the Intercolonial and the Trancontinental Railways. It controls other railway systems as the C.P.R., C.N.R., G.T.R. and G.T.P., by means of a board called The Board of Railway Commissioners for Canada. In this chapter this board will be called the Board and railway companies called the Company. This Board corresponds very closely in its activities to the Interstate Commerce Commission of the United States.

The Board consists of 6 members comprising a chief, assistant and deputy and three other commissioners. Their chief place of meeting and the residence of the commissioners is Ottawa, but sittings of the commission take place at different cities of Canada at different times of the year. They are in reality a travelling court whose duties are to adjudicate on questions relating to Dominion Railways and arising out of the Dominion Railway Act.

It considers and hears matters affecting the Railway and the public in connection with the enforcement of the Railway law of Canada. Some of such matters are highway and other railway and farm crossings, water courses and drainage along right of way fences, cattle guards, fire guards, fire safety devices, limiting speed of railways in cities and towns, whistles, signals, structures and works erected by the railway, contracts limiting liability of the company and generally any matters arising out of the Railway law of Canada and concerning the relation of Railways with the public. It has nothing to do with the taking of lands by the railway for right of way, etc., or with actions for damages against the Railways. The last mentioned matters are governed by the courts.

If any one considers he has a grievance against a railway which might be taken before the Board the advice of a solicitor experienced in railway matters should be sought. The Board will refuse to hear matters which should go before the courts and in such cases the applicant will have to bear the costs of such improper application.

Lands Taken by Railways.

(1) When a railway company is created by act of the Dominion or Provincial parliaments as the case may be, certain extraordinary powers are conferred upon it in order to enable it to carry on its operations, viz: the construction and operation of its lines of railway. One of the most important of these powers is the forcible taking of lands required by the company for its tracks, stations, terminals, and other works. This is called the right of expropriation of lands. In the United States, it is known as the right of eminent domain. Without such extraordinary powers the company could not construct its lines.

Amount of Land Which May be Taken.

(2) Along main lines, branch lines and spurs a strip may be taken for station grounds including yards, warehouses, etc., one mile in length by 500 feet wide. If more land than this is required the company must apply to the Board for leave to take such extra land. The company

may also acquire land for a right of way for a temporary branch or spur with which to bring in sand, gravel, etc., from its main line. Also the company may take, in the same way a right of way is taken, land adjoining the right of way but not more than 600 feet from the centre of the right of way.

How Land is Taken.

(3) The company is required to submit to the Board for its approval the plan of its right of way and upon such approval being granted deposit such plan together with a profile showing levels of the railway and a Book of Reference, giving the names and quantities of land taken for right of way, from land owners along the line, with the Registrars of Land Titles of the Land Registration districts through which the line passes. A notice of such deposit of plan, profile and Book of Reference must be published in some newspaper along the line within 10 days of deposit of the plan. The plan shows the exact route of the line, also names of land owners whose land is taken and acreage of the land taken. In case of spur lines of not more than 6 miles in length the Board will not approve the line unless notice of the application for approval is published in some newspaper published near the spur line.

Negotiations with Landowners.

(4) After the company has done what has been described above the company's land agents visit each of the landowners whose lands are to be taken and enter into agreements with such landowners for the sale to the company of the land it requires and is permitted to take. If the parties come to terms and an agreement is entered into and in pursuance of such agreement the company pays for the lands, title to the lands taken passes to the company and it may then enter upon the lands and carry on its work upon them.

Notice of Expropriation.

(5) Where, however, the parties, i.e., the landowner and company, cannot come to terms the company may then serve the landowner with a notice of expropriation

which sets out that the company requires for its purposes a strip of land 100 feet wide across the landowner's lands and which offers a certain price for it. This is accompanied by another notice stating that if the landowner does not accept the offer within 10 days after service of the notice upon him the company will apply to have an arbitrator or three arbitrators appointed.

Arbitration.

(6) Wherever a landowner receives such a notice he should carefully consider his course of action having the following facts in mind:

If the price offered by the company is any where nearly a reasonable one it should be accepted. If the offer is not accepted arbitrators are appointed and an arbitration takes place. Evidence of value of the lands to be taken is given by sworn valuers on both sides, after which the arbitrator or arbitrators make their award. If by the award the price to be paid for the land taken is more than the price offered by the company the company pays both party's costs of the arbitration. But if the amount awarded is equal to or less than the amount offered by the company the landowner pays both party's costs. It is, therefore, advisable to make sure that the company's offer is unreasonably low and that evidence can be brought forward by experienced valuers to show that the landowner should receive more for his land than what the company offers before the company's offer is refused. The advice of valuers should be sought upon this matter and if the company's offer is refused the services of a solicitor should be immediately obtained.

Damages.

(7) In addition to the amount which the company pays for the land taken, it must also pay to the landowner whose lands are severed, damages for severance and also for any other particular damage to the lands in addition to but not including damage which he suffers in common with other landowners and from these damages must be deducted any benefit coming particularly to the landown-

er's lands by reason of the railway in addition to benefits he enjoys in common with other landowners. The time runs for assessment of damages from the deposit of the plan with the Registrar.

Forcible Taking.

(8) Wherever the company requires lands immediately it may, upon paying what a judge regards as sufficient into court, obtain a warrant permitting it to go upon the lands immediately.

Trespass.

(9) Unless the company settles with the landowner before taking possession or obtains permission from a judge to enter under a warrant as above described, its entry upon the lands of the landowner is a trespass and the landowner has an action at law against the company for damages for such trespass.

Highway Crossings.

(10) All questions relating to highway and other railway crossings are settled by the Board who decide whether the railway shall be carried over, under, along or across the roadway and all matters connected with the crossing.

Facilities and Protection to the Public.

Protection at Level Crossings.

(11) The company must erect signboards at level crossings and trains approaching must whistle within 80 rods of the crossing and ring the bell continuously until the engine has crossed the highway. Some cities and towns prohibit the use of the whistle.

Loss to Owners Where Street Closed.

(12) Where streets are closed by reason of the railway or where the level of the street is raised or lowered above or below the level of the adjoining lands, landowners, (if their access is thereby cut off) have a claim for damages against the railway company or possibly the municipal corporation if it has assumed liability.

Ditches and Drainage.

(13) The company is required to make and maintain along its right of way suitable ditches and drainage systems so as to carry off all surface water collecting alongside the grade. Also the company must not interfere with water lying within or flowing through natural channels such as rivers, creeks, watercourses, lakes, etc., so as to deprive any adjoining owners of this natural flow of water. If any landowner sustains damage by reason of the company not providing proper drainage facilities or interfering with water in natural channels the person damaged may apply to the Board who may require plans of the drainage system, etc., and the Board then makes all necessary orders as to what structures, alterations or ditches, etc., the company shall provide. The landowner damaged in this case may also claim damages or compensation in the same way as when lands are taken.

Farm Crossings.

(14) Where a railway crosses a farm and consequently severs one part from another part the company is required to construct and maintain proper farm crossings so as to give the owner of the land convenient facilities for the proper working of his farm. If the company does not provide such crossings the landowner may apply to the Board which may order the necessary crossings and approaches on each side of the track and prescribe the terms and conditions under which the crossings shall be constructed. The crossing gates must at all times be kept closed.

Fences, Gates and Cattle Guards.

(15) The company must erect and maintain along its line of railway,

(a) Fences.

Fences not less than $4\frac{1}{2}$ feet high on both sides of the railway.

(b) Gates.

Swing gates of same height as fence at farm crossings with proper hinges and fastenings.

(c) Cattle Guards.

Cattle guards on each side of any road or highway at every highway crossing, turning the fences at the cattle guards into the cattle guards at each side. Both fences and cattle guards must be so constructed as to keep out cattle.

Unsettled Districts.

Where the railway passes through wild and unsettled lands no fences or cattle guards need be constructed.

Killing of Animals by Trains.

(16) (a) When any cattle, horses or other livestock are killed by trains or found dead on a highway where the railway crosses it, the company will not be liable if the animals were allowed to be at large on the highway within a half mile of the track without being in charge of some competent person but will be liable under such circumstances if the animals are in the charge of some such competent person.

(b) Whenever the animals are killed upon the company's right-of-way the company will at all times be liable for their loss even though the animals were at large without being in the charge of some competent person, unless the company proves that the cattle got onto the right of way through the neglect or carelessness of the owner, such as the owner carelessly leaving his own gate or the fences within which the animals were enclosed open, or as taking or opening the company's fences, leaving open farm-crossing gates, allowing the animals to go over the farm-crossing without being in the charge of some person, etc. In all these cases the company will not be liable.

Operation of the Railway.

Passengers.

(1) The Carriage of Passengers.

The company is bound to supply all reasonable facilities for the purpose of carrying passengers, i.e., adequate station facilities, passenger cars, appliances for convenience and safety. The company is bound to carry the passenger from starting point to destination but is not bound

strictly to its time table or to permit stopovers. Seating accommodation must be provided but where there is an unusual influx of passengers which overcrowds the cars the company is excused in so far as it cannot then provide sufficient seats.

(2) Passengers Delayed.

The company is liable where a passenger suffers loss by reason of being unreasonably delayed through the fault of the company.

(3) Passengers Refusing to Pay Fare.

In case a passenger refuses to pay his fare the conductor may stop the train at any station or near a dwelling-house and put him and his baggage off but must not use unnecessary force.

(4) Baggage.

Baggage includes personal apparel and articles necessary for passenger's convenience but not merchandise or goods. The company limits the weight of such baggage to usually 150 lbs., for the loss of which it will be responsible to \$100, or thereabouts. These limitations are printed upon the duplicate baggage check handed to the passenger. Passengers should carefully examine conditions printed on baggage checks, bills of lading, etc., as they are bound by such conditions. The company is absolutely liable for baggage to the amount limited from the time the company takes the baggage and gives a check until the baggage is placed on the platform at the place of destination and the passenger has had reasonable time to get it away. The company's liability ceases 24 hours after baggage reaches the destination and for any loss after that time the company incurs no liability unless it is careless or negligent. On sleeping cars the company is liable for loss of baggage carried by the passenger but not checked if it occurs through the negligence of the sleeping car employees.

(5) Injuries to Passengers.

The company is liable for injuries to passengers carried by it only where the injury occurs through the neg-

lect or carelessness of the company such as the use of defective appliances, cars, locomotives, etc. Only persons permitted by the company to be on its premises or trains, i.e., those who have paid their fare or are otherwise invited onto the company's trains etc., can recover damages in ordinary cases. Trespassers, those who have no right to be on the company's premises or trains, can recover for injuries only where the company is wilfully careless. The company is not liable for injuries to passengers while on the platform or baggage cars unless there was no room inside the car.

Goods.

(1) Carriage of Goods.

When the company accepts goods for shipment it is liable absolutely for loss, injury or destruction of the goods while in charge of the company. The only exceptions are where the loss occurs by reason of some defect within the goods themselves or from an event which the company could not have foreseen such as a cyclone, cloudburst, etc., or from the acts of alien enemies. The bill of lading usually limits the liability of the company for loss occurring on their own lines, the risk passing to companies onto whose lines the goods pass.

(2) Carriage of Animals.

Where cattle or livestock are shipped it is usual for the owner to have someone in charge and if loss occurs through the carelessness of such person the company is not liable; otherwise it will be liable. Cattle must not be carried for a longer period than 28 consecutive hours without being unloaded for rest, water and feeding for at least 5 consecutive hours, unless they have been unavoidably detained in transit. The cars also must be cleaned out and the floor strewn with clean sand or sawdust before reloading.

(3) Goods in Warehouse.

As soon as the goods have arrived at their destination and have been stored in the company's warehouse and either the consignee, the person receiving the goods, is

notified to that effect or should have known the goods were in the warehouse and has had time to remove them the company cease to be liable absolutely and is liable only for loss due to the company's neglect or carelessness in connection with the goods. The absolute liability also ceases where through the sender's fault the goods are still in the company's warehouse at the point of shipment. All conditions limiting or altering this liability in contracts of shipment must be approved by the Board. Such conditions should always be carefully noticed.

(4) Rates.

These should not discriminate between persons or places. General rates are fixed from time to time by special commission.

(5) Dangerous Goods.

No passenger may carry nor can the company be compelled to carry dangerous or explosive goods and any person shipping such dangerous goods must mark the nature of the goods on the outside of the package containing them and give another such notice to the station agent receiving them.

(6) Delay to Traffic at Crossings.

Trains cannot pass through cities or towns at a speed greater than 10 miles per hour and must not at road or street crossings block up road or street traffic for a period longer than 5 minutes or such other time as the Board may order.

(7) Thistles and Weeds.

The company is required to cause all thistles and noxious weeds growing on the right of way and upon any adjoining land of the company to be cut down or rooted out and destroyed each year before such thistles and weeds have sufficiently matured to seed. The company is liable to adjoining proprietors for loss to them resulting from neglect to do this.

(8) Fires.

The rules as to fires are as follows:

(a) The company must at all times keep the right of way free from dead or dry grass, weeds or other combustible material.

(b) Wherever it is proved that an engine on the company's premises has set fire to property, buildings, crops, &c., by sparks or otherwise the company is absolutely liable up to \$5,000, whether the company was careless or not. Where over \$5,000 damage is caused, and the company has not used efficient apparatus, or its employers have been careless or negligent it is liable for the excess. Any insurance the owner receives is deducted from the amount the company has to pay.

Limitation.

All actions for damages against the company in connection with the construction and operation of the Railway must be brought within one year of the accident or damage caused.

SALE OF GOODS.

THE Sale of Goods Acts are almost exact copies of an English act by that name.

The chapters on Chattel Mortgages and Bills of Sale, and on Lien Notes deal specially with the documents transferring or mortgaging goods. In the present chapter the rights of buyer and seller are stated. The main feature of the Sale of Goods Act are

Sale, Agreement of Sale.

A sale occurs where under a contract of sale the goods are forthwith transferred to the buyer.

An agreement to sell occurs where under a contract of sale the goods are to be delivered at a future time.

Who May Buy or Sell.

In ordinary cash transactions where payment is immediately made in full anyone may be buyer or seller. But where liabilities are incurred only those who can make a valid contract (see contracts) can incur liability. Infants are liable only for goods that are necessities.

Form of Contract of Sale.

Contracts of sale of goods must be in writing if the goods are worth more than \$50.00, unless the purchaser actually receives part of them or makes part payment for them, or gives something in earnest to bind the bargain. The writing must contain the date of sale, names of buyer and seller, description of goods, the price, and must be signed by the party who is to be charged, that is held to the contract, the person who seeks to have the contract enforced must have the other person's signature to it. But a contract may be inferred from correspondence.

Contracts for less than \$50.00, or for more than \$50.00 where part payment or part delivery is made, may be by writing or by word of mouth or may be implied from the dealings of the parties.

Goods.

The goods may be in existence or to come into existence or to be acquired in future by the seller. If goods perish without the knowledge of the seller or perish without fault of the seller before the risk passes to the buyer, the contract is void.

Price.

The price may be fixed by the contract, or may be left to be fixed in a manner agreed on in the contract, or may be determined by the dealings of the parties. Where the price is not determined the buyer must pay a reasonable price. Where goods are sold at a price to be fixed by a valuator and he does not act the sale is void.

Conditions and Warranties.

In contracts for the sale of goods there are often promises and representations. On the part of the seller

there are promises or warranties as to the quality of the goods, the length of time they will last, materials they are made of, their usefulness for any particular work and so on indefinitely. There are also promises by the buyer to pay for the goods, to accept them, etc. Some of these promises or representations are deemed so important by the parties or by the law that if they are not fulfilled the other party may consider the contract as void. Such representations are called conditions. Other promises and representations are deemed of somewhat less importance so that if they are not fulfilled the other party cannot consider the contract at an end, but can only have an action for damages against the party who has not fulfilled the promise. These promises or representations are called warranties. Where the buyer wishes to retain the goods or where something has been done which makes it impossible to cancel the contract on the non-fulfilment of conditions which would otherwise entitle the party aggrieved to cancel it, such conditions become warranties, giving the person aggrieved a right to damages.

Whether in any particular contract promises and representations are to be treated as conditions, the breach of which terminate the contract or as warranties the breach of which gives the injured party only an action for damages for such loss as he has suffered can only be determined from the terms of the contract. It all depends upon whether the parties considered any representation so vital as to be considered a condition.

In any contracts for the sale of goods **unless the parties agree otherwise** or the circumstances show a different intention the following conditions are implied on the part of the seller.

(a) That the seller has the present right to sell the goods or if for a sale at a future time that he will have the right to sell the goods at that future time.

(b) That the buyer shall enjoy quiet possession of the goods.

(c) That the goods shall be free from any charge or encumbrance in favor of some other person not known to the buyer at the time of the sale.

(d) Where there is a sale by sample or description that the goods sold will correspond in bulk with the sample or description, and that the buyer shall have an opportunity of comparing the bulk with the sample and that the goods shall be free from all defects rendering them unsaleable, which defects do not appear in the sample after a reasonable examination of it.

(e) There is generally no condition to be implied upon the part of the seller that the goods are useful for any particular purpose, except where the buyer makes known to the seller that he requires the goods for a particular purpose and it is in the course of the seller's business to supply such goods there is an implied condition that the goods will be reasonably fit for that particular purpose. This exception does not hold on a sale of a patented article under its trade name.

Neither the time set for payment nor for delivery is usually considered a condition unless the agreement of the parties or the nature of the contract makes it clear that it must be so considered.

Transfer of Ownership of Goods.

Just when the ownership of goods passes from the seller to the buyer so that from that time the risk passes from seller to buyer is a matter of very great importance. The following rules are contained in the Sales of Goods Acts:

(a) Unascertained Goods.

On a contract of sale of unascertained goods, for example, a contract for the sale of any ten head of cattle out of a herd, 100 bushels of a larger quantity of wheat, forty sheep out of a flock, etc., the ownership cannot pass until the goods to pass under the contract are selected or picked out by the buyer with the consent of the seller or **vice versa**. When the goods are so selected the ownership and risk of loss are held to pass to the buyer unless the parties otherwise agree.

(b) Ascertained Goods.

On a contract of sale of ascertained goods, for example the furniture in a certain house, any particular article or piece of machinery, a certain horse named "Jack", etc., the ownership of such goods passes whenever the parties intend it to pass within the following rules.

Where there is an unconditional sale of specific particular goods, the ownership passes when the contract is made unless the seller has still to do something to the goods to put them into condition for delivery, or has to weigh or measure them to fix the price when the ownership does not pass until this is done.

Reserving Rights of Disposal.

This means that the seller retains the ownership of the goods until the buyer performs some condition, such as payment when goods are shipped C.O.D. Wherever the goods are, provided they are not in the buyer's possession, no ownership can pass until the buyer performs the conditions required. Where no conditions are to be performed by the buyer and the seller does not reserve the right of disposal the ownership and risk pass to the buyer when the seller delivers the goods to a railway company for shipment.

The risk always passes with the ownership, but where either buyer or seller delays delivery the party so delaying bears any loss resulting.

Transfer of Title.

Any person in possession of goods but not the owner can give a perfectly good title to the goods to a purchaser purchasing without knowledge that such person does not own the goods, unless the real owner or a mortgagee has registered the documents required by the Bills of Sale or Lien Note Acts. (See Chapter on Bills of Sale and Lien Notes).

Performance of Contract.

(1) Delivery and Payment.

The seller must deliver the goods and the buyer must pay for them and accept them as provided by the contract

and, unless the parties agree otherwise, the buyer cannot claim delivery, until he pays, nor the seller payment until he delivers.

(2) Place of Delivery.

Unless otherwise agreed, the place of delivery is the seller's place of business or if he has none his residence. If the goods or part of them are in some other place at the time of the contract that other place is the place of delivery.

(3) Time of Delivery.

Unless some time is fixed in the contract for delivery the seller must deliver within a reasonable time and at a reasonable part of the day.

(4) Expense of Delivery.

Unless otherwise agreed the expense of putting goods in condition for delivery is borne by the seller.

(5) Delivery of Wrong Quantity.

When the seller delivers more or less goods than ordered the buyer may either accept all sent or reject all or if more are sent than ordered accept only so much as ordered. Whatever quantity the buyer accepts he must pay for at contract rate. If the seller mixes with the goods ordered goods not ordered, the buyer may accept all or accept only the goods ordered and reject the rest or reject the whole. In the case of rejected goods the buyer does not have to return them, it is sufficient if he intimates to the seller that he rejects them.

(6) Instalment Deliveries.

Instalments should be delivered as per contract and accepted by the buyer. Failure to deliver or accept or pay for an instalment sometimes is considered such a breach of contract as to void the whole sale, especially so if the parties agree that non-delivery or non-acceptance of instalments shall have that effect.

(7) Delivery to Railway.

The seller must make a proper contract with the railway company and if he accepts any improper conditions

the buyer can claim from him any loss as a result of such improper contract with the railway company. (See as to liabilities of railways for carrying goods, Chapter on Railways.).

(8) Delivery at Long Distance.

Unless otherwise agreed, the buyer assumes the loss for deterioration of goods necessarily occurring from the long distance goods are shipped but although shipped a long distance buyer bears no loss occurring through any want of care by the seller.

(9) Buyer's Right to Examine.

Where the buyer has not previously examined the goods he is not deemed to have accepted them until he has had an opportunity of examining them to see if they conform with the contract.

(10) Buyer's Acceptance.

The buyer is deemed to have accepted the goods and so is liable to pay for them when he intimates that he has accepted them or does anything to the goods he should not do if he does not intend to keep them or retains them for an unreasonable length of time without intimating to the seller that he does not intend to keep them.

(11) Buyer's Non-Acceptance.

Where the seller is ready and willing to deliver and the buyer wrongfully refuses to take them the buyer is liable to the seller for any loss resulting from such non-acceptance.

Rights of Unpaid Seller.

Where the buyer has not paid for the goods in whole or in part at the time required by the contract or has dishonoured a draft the seller has the following rights:

(1) Lien.

So long as the seller has possession of the goods and has not agreed to give credit or if credit has been given and the time has expired or where the buyer is insolvent or where part of the goods have been delivered, he may retain

the goods until payment is made. This right of lien for the price ceases where the buyer lawfully gets possession of the goods or the seller delivers them to a railway company and does not reserve the right of disposal.

(2) Stoppage in Transit.

The seller has a right to stop the goods in transit to the buyer when the buyer becomes insolvent. The seller in such a case must notify the railway company or whoever has charge of the goods to hold them and return them to him at his expense. This right can only be exercised before the goods are delivered to the buyer.

(3) Resale by Seller.

If the seller either retains the goods for payment by the buyer or stops them in transit in case the buyer is insolvent, he has a right to resell if the contract so provides or the goods are of a perishable nature. The seller should give the buyer due notice of such resale.

Remedies of Seller.

Action for Price.

In addition to the above remedies the seller may bring an action against the buyer for the purchase price if the buyer refuses payment when due.

Damages.

If the buyer does not accept the goods the seller may bring action for damages for not accepting. The amount of damages will be the difference between the sale price and the price the goods will bring in the market when the buyer refuses to accept.

Remedies of Buyer.

If the seller wrongfully refuses or neglects to deliver the goods to the buyer, the buyer cannot generally compel the delivery of the goods in the same way that a purchaser of lands can convey the conveyance to him of lands he has purchased, though in special cases, e.g. where the goods are rare or difficult to replace, a court may decree that the seller deliver the specific goods purchased. The buyer has at law an action against the seller for non-delivery of the

goods purchased and briefly the damages recoverable by the buyer is the difference between the sale price and the market price of the goods. For any breach of warranty by the seller the buyer may bring an action for the damages he has suffered.

Auction Sales.

(a) Where goods are put up in lots each lot is deemed to be a separate contract of sale.

(b) A sale is complete when the hammer falls; until then the bidder may recall his bid.

(c) A seller may not bid unless the sale is so advertised.

(d) Whenever the sale is subject to a reserve bid the sale must be so advertised.

SUNDAY OBSERVANCE

THE law relating to the observance of Sunday is contained in a Dominion Statute called the "Lord's Day Act". Some of the provinces have passed Acts supplementing these provisions.

The following is the law in the four Western Provinces:

The Lord's Day or Sunday.

The Lord's Day or Sunday begins at 12 p.m. Saturday and ends at 12 p.m. Sunday.

Acts Which May Not be Done on Sunday.

(a) Except as stated below no one may on Sunday sell, offer for sale or purchase any goods or chattels or real estate, or carry on or transact any business of his ordinary calling or connected with his calling or for gain, or employ any other person to do such things.

(b) No person may engage in any game for reward or prize or attend any such game, and no person may engage in or attend any public meeting, performance, etc., elsewhere than in a church, if an admission fee is charged,

and no person may convey any person to such game or performance.

(c) No excursion may be run on Sunday by rail, steamboat or other conveyance where passengers are charged any fee and the sole object of the excursion is amusement and pleasure.

(d) It is unlawful to advertise any (prohibited) game, performance or excursion which is to take place on Sunday.

(e) No person may use any fire arms, either for gain or in such a way as to disturb public worship or the proper observance of Sunday.

(f) No foreign newspaper may be sold in Canada on Sunday.

(g) Persons engaged in receiving and transmitting telephone and telegraph messages, and in any manufacturing or industrial work cannot be compelled to work on Sunday except in case of emergency, unless they receive instead another whole day out of each week.

Alberta, Manitoba and Saskatchewan.

No person on Sunday may play at billiards in any public room or run races on horseback or on wheels of any sort or engage in any game in any public place and may not hunt or pursue game unless in actual want of such game for household needs.

British Columbia.

No person may engage in any public game of any kind on Sunday.

Acts Which May be Performed on Sunday.

(a) Generally all works of mercy or necessity may be performed on Sunday.

(b) All customary work in connection with Divine Worship.

(c) Work for relief of sickness or suffering, as sale of drugs, medicines or surgical instruments.

(d) Receiving, transmitting or delivering telegraph or telephone messages.

(e) Making or maintaining fires and making repairs to furnaces and any emergency repairs and doing any other work necessary and essential in any manufacturing plant of such a character that the work could not be stopped without serious loss.

(f) Making fires in, ventilating, pumping out and inspecting mines where such work is essential to life, property or health.

(g) Necessary work connected with the supply of electric current, light, heat, cold air, water and gas.

(h) Conveyance of travellers and all work in connection therewith.

(i) Loading and unloading merchandise and keeping tracks clear of ice and snow. Work before 6 a.m. and after 8 p.m. on Sunday by yard crews in handling cars is permitted.

(j) Necessary loading and unloading of ocean going vessels.

(k) Caring for live stock, milk and cheese and unloading and caring for perishable articles and live stock arriving at any point during Sunday.

(l) Operating any toll, drawbridge or ferry authorized to carry passengers.

(m) Hiring horses and carriages or small boats to be used only by the person hiring and his family for personal enjoyment, but not for the purpose of running an excursion or conveying persons and charging a fare.

(n) Inevitable work after 6 p.m. Sunday in preparing the Monday edition of a newspaper.

(o) Carrying of mails.

(p) Delivery of milk for domestic use and work of domestic servants and milkmen.

(q) Operating street railways, carrying passengers.

(r) Work done by Police Officers.

(s) Unavoidable work done by policemen after 6 p.m. Sunday.

(t) Making maple syrup and sugar.

(u) Any unavoidable work to save property in an emergency.

Penalties.

(a) Persons violating the Lord's Day contrary to the provisions of the Act are liable to a penalty of from \$20 to \$40.

(b) Employers authorizing their employees to violate such provisions are liable to a fine of from \$20 to \$100 and companies or corporations so directing, permitting or authorizing any such violation are liable to a fine of from \$50 to \$250.

THRESHER'S, THRESHER EMPLOYEES' AND WOODMEN'S LIENS.

(Application should be made to King's Printer at Government Buildings for forms).

Registration.

IN Alberta, threshing machines must be registered with the Minister of Agriculture for Alberta who issues a certificate of registration upon the payment of a fee of \$1.00. When the machine is sold the certificate must be transferred by the Minister to the purchaser.

Liens of Threshers.

(a) **When Lien Arises.**

Alberta, Saskatchewan and Manitoba.

Threshers have a lien or right of retention on as much grain threshed by them as will when sold at the prevailing market price pay their charges for threshing and also pay for the cost of haulage of the retained grain to the elevator or other market.

(b) **How and When Lien Enforced.**

Alberta.

The right to a lien commences when threshing commences. The machine must have been registered. All wages of the thresher's employees must be paid and notice

of his intention to hold the grain must be given during the threshing or immediately after to the person whose grain is threshed and, within 30 days after threshing, the grain retained must be removed from the premises of the owner.

Saskatchewan.

The thresher's lien continues for a period of sixty days after the commencement of threshing. The grain need not be removed but should be separated from the other grain of the owner and the right to such grain must be asserted within 60 days after commencement of threshing, and cannot be asserted until after the thresher has given to the owner at least 24 hours' written notice of his intention to do so.

Manitoba.

The right to retain the grain must be asserted within 30 days after the grain is threshed by piling the same up or securing it in bags or other receptacles and by the thresher declaring in words or in writing his intention to hold the grain. It may be housed or stored in the thresher's name.

Sale

Alberta.

The grain may be sold if threshing charges are not paid as follows: Fifteen days after the grain is retained, but not later than thirty days thereafter, unless the owner consents otherwise in writing.

Saskatchewan.

The person taking the necessary estimated quantity of grain may forthwith store it in his own name in any public elevator or at the thresher's risk in any other suitable storing place, and if, at the expiration of five days from the taking, the price or remuneration for the threshing has not been paid, he may sell the grain at a fair market price.

Manitoba.

Upon the expiration of five days after retention and not later than thirty days after being so retained unless

the owner consents otherwise in writing. It should be hauled to the nearest elevator or market and there sold at a fair market price.

Proceeds of Sale

The proceeds of the sale should be applied to the costs of haulage to elevator or market and charges for grain threshed and the balance should be paid to the owner.

Cost of haulage shall not exceed the following amounts:

Alberta.

4c. per 100 lbs. for 6 miles and $\frac{3}{4}$ c. per 100 lbs. for costs additional. The total charge not to exceed 20c. per 100 lbs.

Saskatchewan.

The reasonable cost of transporting grain to market: Oats, $1\frac{1}{2}$ c. and other grain 2c. per bushel for each five miles hauled.

Manitoba.

The reasonable cost of transportation of grain to market.

Weeds

All threshers must comply with the regulations respecting noxious weeds.

Priority

The thresher's lien for threshing so long as it continues and the above regulations are carried out is a prior claim upon such grain retained coming before all other rights whatsoever held by any person against such grain, except in Saskatchewan where charges for the price of such grain, if any, come before such charge for threshing.

Penalties

In Alberta violations of the above regulations are punishable by fine and imprisonment. In Manitoba a copy of the act must be affixed to all threshing machines while

being operated. Anyone defacing such copy is liable to a penalty.

Lien for Wages of Thresher Employees or Workmen

Alberta and Saskatchewan.

(a) Extent of Lien.

Any employee or laborer employed on or about any threshing machine has a first right to the amount of his wages upon any sums due to the thresher employing him from the owner of the grain. Such right comes prior to any other right against such sums of money claimed by any other person.

(b) Notice.

The thresher's workmen must within ten days after the threshing is completed serve upon the owner of the grain who owes the thresher for threshing, and also upon the thresher employing him a notice of his claim for wages. If the thresher employing the workman disputes such claim he must serve a notice upon the owner of the grain. The owner of the grain must hold all amounts due the thresher until ten days, (Saskatchewan 20 days) after the threshing and if claims of workmen are served upon him, for 30 days after threshing. If the thresher also serves him with a notice disputing such claim or if the total of the workmen's claim exceeds the amount due the thresher employer, he should take all claims and notices served upon him to the Clerk of the District Court of the Judicial District in which he resides, together with the amount due to the thresher for the threshing of the grain and file and deposit that amount with such clerk all within 10 days after the threshing is completed. The clerk will advise as to next steps.

If no claims are served by any workman upon the owner of the grain within ten days after threshing the owner may pay to the thresher all amounts due him. If workman's claims are served upon him and the thresher does not dispute same, he may upon the expiration of 30 days after the threshing safely pay the workmen the wages claimed by them unless the total amount of wages so

claimed by the workmen exceed the amount he owes the thresher when as stated above he must pay the same into the District Court of the Judicial District where he resides and also file with the clerk of such Court the claims served upon him.

(d) Owner Refusing to Pay.

If the owner refuses to hold moneys due the thresher for 10 days after threshing or to pay to the workmen the amount claimed by them and the thresher does not dispute the claim they may apply upon information to a Justice or Police Magistrate who after summoning the owner and after hearing both parties in the same way as in the case of master and servant may order the owner to pay the workmen such wages.

(e) When Claims Disputed.

After the owner has paid the moneys claimed due into Court and the claims and disputes are lodged with him, the Clerk of the Court immediately notifies the thresher and the employees claiming the wages. All employees claiming wages should immediately obtain the services of a solicitor who will obtain the issue of a summons for hearing of the whole matter before a judge who will decide the rights of all parties. In no case will the owner of grain be liable for any costs unless he wrongfully refuses or neglects to pay the money to the workmen or into Court as the case may be. When claims and costs amount to more than the amount due the thresher, each workman will receive an equal proportion of his wages.

Manitoba.

The lien covers also wages for repairs upon a threshing machine. The workman must within 20 days after filing his claim take proceedings against the owner by taking the matter before a J. P., as in the case of master and servant (See chapter on Master and Servant) by commencing suit. Other provisions are similar to those in Alberta and Saskatchewan. The owner of the grain should file notices served upon him and pay the amount claimed by the workman to the Clerk of the County Court

of the County in which he resides. The employer must within thirty days thereafter have a summons issued for the hearing of the matter before a Judge.

Woodmen's Liens.

All Western Provinces.

Liens.

All woodmen have in each province a lien or first claim for the amount of wages due them in connection with services performed by them upon logs or timber upon such logs and timber, such lien is prior to all other claims against the logs and timber excepting claims by the Crown and in British Columbia claims for tolls by lumber slide companies or owners of ships and booms. In Manitoba the claim is limited to \$200. In the other Provinces there is no such limit.

Filing of Lien.

Alberta, Saskatchewan and Manitoba Forms.

Woodmen wishing to secure the payment of their wages by such lien must file a statement of lien with the clerk of the Supreme Court of the Judicial District in which the work was performed or where the log drive terminates if the amount claimed exceeds \$600, if less, in the office of the District Court. Such statement of lien must be filed on or before June 30th in Alberta where services were performed on the logs between October 1st and June 1st. In Saskatchewan before April 30th where services were performed between Oct. 1st and April 1st; where performed at other times within 30 days after the work is performed.

British Columbia.

Same provisions except that the claim for liens must be filed in the office of the Clerk of the County Court of the county in which the services are performed or if not performed in any county then in the office of the Government Agent nearest such place where services were performed. The lien must be so filed within 30 days after performance of services on logs.

Sale of Logs.

No sale by owner of the logs or any disposition of them by sale, mortgage, etc., affects or defeats the woodman's right of lien during the time it remains in force. Any purchaser or mortgagee of such logs, etc., takes them subject to such right of lien. In British Columbia such lien applies to sawn timber in the boards of some purchaser.

Enforcement.

Suit must be commenced against the owner of the logs to enforce such lien in the Court in which filed within 30 days after filing. Unless liens are filed within the time mentioned and suit commenced within the time stated the woodman ceases to have any lien right to such logs in respect of his claim for wages. The action then provides another. The amount found due for wages may be realized by a sale of the logs. The services of a lawyer should be secured to prepare the lien and to take the necessary proceedings.

Attachment of Logs.

Whenever a woodman has filed his lien as above stated for an amount not less than \$10.00 (In British Columbia there is no limit) and has good reason to believe that the logs are to be removed out of the province, or that the person who owes him wages has absconded (departed) from the Province with the intention of defrauding his creditors or that the logs are about to be sawn up into lumber or other timber so as not to be capable of being identified and that he is in danger of losing his claim he may obtain upon making the proper affidavits a writ of attachment directed to the Sheriff or Bailiff to seize and hold such logs until the claims of lien may be enforced. (For this purpose a solicitor should immediately be employed.)

TITLE TO LAND.

Introductory.

THE system of registering titles to land known as the Torrens System takes its name from its inventor, Sir Robert Torrens, an Australian, who urged its adoption in the later sixties of the nineteenth century. It is now the only system of land registry in operation in the Commonwealth of Australia and New Zealand and, in Canada, in the Provinces of Alberta and Saskatchewan. It is in operation along with the older system in Manitoba, Ontario and in England. A system of land registry similar in form is in force in British Columbia and in a few of the states of the United States.

The older system still in force and in operation in the older provinces of Canada, in parts of England and in the greater part of the United States is a system of land registry where all documents affecting land are registered in registry offices but before a purchaser of land can be sure that he is getting a good title he must employ the services of a solicitor to investigate all dealings with and all instruments affecting the land for a period extending back 60 years and very often extending back to the original grant from the Crown. This search is slow, often very expensive and filled with the danger of the oversight of some important document.

To do away with this troublesome and expensive system the Torrens System was invented. It was introduced into Manitoba in 1885 and into Saskatchewan and Alberta in 1886. In Manitoba all lands not brought under the new system are still under the old system.

Nature of the Torrens System.

Under this system the thing which is registered is not primarily the instrument affecting land but the title to land itself. It supplies to land owners who have their lands brought under it a registered guaranteed certificate, of title clear of everything except what is shown upon the title itself and certain exceptions hereafter mentioned. The machinery of the system is very simple so that the buying and selling of land occasions little more loss of time or expense than the buying and selling of goods.

Land Registration Districts.

In Alberta, Saskatchewan and Manitoba the land is divided into Land Registration Districts. The limits of these districts may be learned by consulting some popular guide such as Waghorn's Guide. In each of these districts there is a Land Titles Office presided over by a Registrar of Titles. All dealings with lands situated in any district must be recorded in the Land Titles Office of that district. The Land Titles Offices are fitted up with entry books and books of record upon which are recorded all instruments affecting lands in that district. The Registrar is assisted by a staff of examiners, surveyors, clerks, etc. He does not decide the rights of parties but only the validity and correctness as to form of instruments affecting land presented at the Land Titles Office for registration. In Alberta and Manitoba his acts and decisions are subject to review by a judge of a superior court; in Saskatchewan by the Master of Titles.

Getting Lands Under the System.

In Alberta and Saskatchewan all lands patented after January 1887 are under the system. When patents to any unpatented lands are issued through the Minister of the Interior at Ottawa who has charge of all Dominion Lands (see chapter on Homesteads and Pre-emptions) the patents are forwarded to the Land Registration District in which the lands are situated and there a certificate and duplicate certificate of title are issued which bring the newly patented lands under the system. In Manitoba, Alberta and Saskatchewan all lands not hitherto brought under the system may be brought under by an application to the Registrar setting out and producing all documents of title relating to the lands. If the Registrar is satisfied with the title he issues a certificate and duplicate certificate of title whereupon the land is within the operation of the new system.

The Certificate of Title.

This is a document contained in the Books of Record in the Land Titles Office of the district in which the land is situated certifying that the owner whose name appears

in full is the owner in fee simple, the largest estate known to the English law, of the lands described in the certificate. A duplicate of this certificate called the duplicate certificate of title is then issued to the owner. The owner of the land is styled the registered owner. His title is subject to the following:

(a) All encumbrances, charges or claims affecting the land, such as mortgages, leases, caveats, mechanics' liens, noted by memorandum on the certificate of title.

(b) Any adverse rights arising through fraud or error in which the registered owner or the Registrar took part. Such losses unless through fraud of the owner are compensated for out of the assurance fund. Where the registered owner obtained his title through fraud or was aware of fraud having occurred when the title was previously obtained the certificate of title is liable to be cancelled.

Certain Statutory Exceptions.

(c) In Manitoba and Alberta these are printed on the margin of the duplicate certificate of title. These comprise original rights reserved to the Crown as mines, minerals, etc., unpaid taxes, public highways, leases for not more than 3 years, decrees and orders of court affecting the land, public rights of way and a few others.

At first sight it would appear that the Torrens Title is subject to many and various complicated outstanding rights and claims but practically it amounts to this that the certificate of title to land filed by the registered owner is a guaranteed clear title to that land subject only to the encumbrances and claims noted by memorandum on the original certificate of title and to liability of cancellation because of fraud or error in the issue of the certificate of title and to certain public and private rights mentioned on the margin of the duplicate certificate of title.

Registration of Instruments.

All instruments affecting land under the system in order to have any validity against other later dealings with the land must be registered, unregistered interests may be

those held by persons holding transfers, agreements for sale, mortgages. Leases for more than 3 years not registered are liable to be at any time defeated by other persons obtaining rights to the land under instruments which are registered.

Registration is effected by depositing with the Registrar of the Land Titles Office in which the land is situated duplicate copies of the instrument to be registered accompanied by the duplicate certificate of title which must always unless it is held by the Registrar, be presented with all instruments to be registered. If the Registrar finds the instruments submitted to be valid and in proper form for registration a memorandum of the instruments is noted on the certificate and duplicate certificate of title. The instrument takes effect from the time of entering the memorandum as described. In the case of registration of transfers the old certificate is cancelled and a new certificate and duplicate certificate of title is issued. All instruments such as agreements for sale and agreements confirming any rights other than those affecting rights by transfer, transmission, mortgage, encumbrance and lease, must be registered under caveat, or rather they may not be registered at all but instead a caveat may be registered referring to them.

The following instruments may be registered:

(a) **Transfers.**

A transfer is a paper writing setting out simply that John Smith being the registered owner of an estate in the land described transfers his title to it over to another. It is not a deed and has practically the same effect in affecting the transfer of land as a bill of sale of goods or a transfer of stock in a company.

Form.

A form is given in the Acts. It may be signed in blank. It need not be under seal but usually is. It is executed in the presence of a witness who attests it.

Who May Give.

Only the registered owner may give a transfer but a purchaser under an agreement for sale holding a transfer

from his vendor can execute a transfer to another before he becomes the registered owner. It must show in Alberta and Manitoba all leases, mortgages and charges upon the land transferred but cannot contain any restrictive covenants, i.e., building restrictions, which are registered under caveat. The transferee must make an affidavit as to the value of the land so as to fix the fees payable under the assurance fund. A new certificate and duplicate is issued to the transferee showing all charges affecting the land.

(b) Transmissions.

This is a term used to describe the transfer of land from one registered owner to another otherwise than by the transfer above described. It occurs in the following cases.

(1) Death.

When the registered owner dies and the title is to be registered in the name of the executor or administrator of the deceased. This is effected by filing with the Registrar a certified copy of the Letters Probate or Letters of Administration and a request in writing that the title be transferred to the executor or administrator.

(2) Insolvency.

In such cases if necessary the assignee may apply to have the title to lands owned by the insolvent transmitted to him.

(3) Sale for Taxes.

In Manitoba these proceedings are carried on before the Registrar and in Alberta and Saskatchewan before a judge. The order confirming the sale when filed with the Registrar is authority to him to issue a certificate of title in favor of the purchaser under the sale.

(4) Orders of Court.

Title is transmitted by order of court in mortgage actions (see chapter on Mortgages of Land).

(5) Lunacy and Guardianship of Infants.

The guardians of lunatics or infants (minors) may apply for transmission of title of the lunatic's or minor's

estate to them in the same way that the title to a deceased person's estate is transmitted to the executor.

(c) Mortgages.

These are treated in a separate chapter (see Mortgages of Land).

(d) Leases.

A lease is an instrument in writing usually under seal whereby an owner of land the lessor leases to another, the lessee, his lands for a certain length of time at a fixed rental per month or per year. Each party covenants to do certain things (As to the rights of lessor under a lease see chapter on Landlord and Tenant).

Form.

Only leases for a period of more than 3 years are required to be in writing and to be registered in order to be valid. Where they are required to be registered as being for a period longer than 3 years they should be prepared by a solicitor.

(e) Caveats.

It is impossible to register upon the certificate of title all interests in land to which a person may be entitled. For example the purchaser of land under an agreement cannot become the registered owner until he has paid for the land in full and obtained a transfer. He has however in the meantime what is styled an equitable interest in the land. Also a case might arise where a purchaser has paid in full for and received a transfer to land but is unable for some reason such as inability to secure the duplicate certificate of title to register the transfer.

To preserve and secure certain specified interests in land which cannot be registered directly provision is made for filing an instrument called a caveat (Latin for "beware"). The caveat does not make the claim of the person claiming an interest any stronger but it does show that the person filing it has some outstanding interest for which a caveat can be filed and the filing of the caveat preserves that interest against any later dealings with the

land. Any person acquiring any interest in the land after the filing of the caveat does so subject to the interest, if any, claimed in the caveat. Caveats as between themselves and with other instruments take priority (i.e. precedence) according to the time at which they were registered and not according to the time when the interest arose.

Filing of Caveats.

Where any person claims an interest in lands arising under any will, settlement or trust deed or under any instrument of transfer or transmission or under any unregistered instrument or under any execution where the execution creditor seeks to attach not the registered owner's interest but the beneficial interest of some one else, such as that of a purchaser under an agreement for sale, and generally for any interest in land for which the claimant holds a writing, but probably not where the interest claimed is not contained in a writing, a caveat may be filed.

Form.

A caveat should always be drawn up by a solicitor. It must state accurately the name and occupation of the caveator, the nature of the interest claimed, the grounds upon which such claim is founded, an exact description of the land and the caveator's address for service of notices affecting the caveat. The caveat notifies the Registrar of the existence of the claim and forbids the registration of any interest except subject to that claim. The caveat must be signed by the person claiming the interest under the caveat called the caveator or his agent but need not be witnessed. The caveator or his agent must make an affidavit included in the form to the effect that the caveator believes he has a valid interest in the lands and is not filing the same for any improper purpose.

Withdrawal of Caveat.

The caveator may at any time withdraw his caveat but is nevertheless liable to the owner for any expense he has been put to in connection with such caveat.

Caveat Improperly Filed.

A person who without reasonable cause files or permits a caveat to continue to be filed is liable to the registered owner for any loss sustained by him through such filing and such loss may be recovered by an action at law or in the proceedings referred to in the next paragraph.

Removal of Caveat.

Proceedings are prescribed whereby the caveator may be served with a notice requiring him to commence an action or other proceeding on his caveat within the time mentioned in the notice. If the caveator upon whom such notice is served fails to take proceedings under his caveat within the time limited in the notice his caveat ceases to have any effect and is removed by the Registrar. Upon application to a judge the time may be extended for commencing such action.

Second Caveat.

Where one caveat has lapsed or been withdrawn a second caveat cannot be filed except by leave of a judge.

Filing Caveat Before Registration of Title.

Before land under the old system is brought under the new, a caveat may be filed, prohibiting the land being brought under the new system. Such caveat lapses a month after filing unless the caveator takes proceedings under the caveat.

Executions.

In Alberta and Saskatchewan after a writ of execution is issued upon a judgment a copy of the execution is forwarded to the Registrars of Land Titles in all land registration districts in which it is believed the debtor owns lands. Such execution binds all the debtor's interest in the lands from the time the execution is registered but would not bind the land if it had been previously sold under agreement for sale. In Manitoba a certificate of judgment is filed. (The execution must be renewed at the end of every two years after the time it was first registered). If it is desired to bind lands of which a debtor is not the registered owner but has nevertheless such an interest as

would be obtained under an agreement for sale of the lands to him or under a will in which he has an interest in lands an execution may be made to attach such interest by being filed under a caveat.

Powers of Attorney.

Two kinds of Power of Attorney may be registered.

(a) A General Power of Attorney.

Whenever a registered owner gives to another a power of attorney to deal with his land and the land is referred to in general terms he may give a general power of attorney. Such general power of attorney may be registered but does not appear on any certificate of title. It refers to the lands of the person giving it generally but to no particular lands.

(b) Special Power of Attorney.

If in the power of attorney particular lands are described the power of attorney is registered by memorandum upon the certificate of the particular lands therein described and thereafter until revoked no person, even the owner, other than the person mentioned in such particular power of attorney may deal with the lands.

Assurance Fund.

Under the Torrens System of land titles the title to land is guaranteed. That means that the legislature enacts that the registered owner of lands holds a title clear of all adverse claims, charges and encumbrances except those endorsed by memorandum on the certificate of title and the exceptions above mentioned. Occasionally loss of land, therefor, unavoidably occurs in connection with the registration of titles and instruments. In order to insure the registered owner against such loss, the assurance fund has been provided.

When Fund is Available.

Compensation can be claimed from the fund in the following cases, viz:

1. Where loss of land or other loss occurs through the neglect or carelessness of the Registrar or his staff.

2. Where loss of land or other loss occurs through the fraud, mistake or carelessness of some person other than the Registrar and his staff and other than through the fraud, mistake or carelessness of the person sustaining loss.

How Compensation Recovered.

In Manitoba in either case an action may be brought against the Registrar directly but where persons other than the Registrar and his staff are to blame judgment must be first had against those persons and an attempt made to realize such judgment against the property of such person or persons, before the assurance fund can be available for compensation and then only such compensation may be obtained out of the assurance fund as could not be realized out of the property of such other person.

In Saskatchewan and Alberta where some person other than the Registrar is to blame for the loss that other person must first be sued and only when it is either impossible to sue such person or where judgment is obtained it cannot be realized upon will the assurance fund be liable. Where the Registrar is at fault action must be brought against him directly. All actions must be brought within 10 years of loss.

Fees.

The following fees are payable to the assurance fund upon every transfer of land.

Alberta and Saskatchewan.

Where land is of value of \$5,000 or less, one fifth of one per cent on any transfer after issue of first certificate. On land over \$5,000 in value one tenth of one per cent. On each succeeding transfer these fees are payable on the increase in value only at the above rates.

Manitoba.

One tenth of one per cent on first bringing the land under the system where no previous transactions affecting the land have been registered. In all other cases one quarter of one per cent.

WILLS.

IN British Columbia, Manitoba and Saskatchewan the law as to Wills is contained in a special statute. In Alberta the law of Wills is the law of England in force on July 1st, 1870, except where altered by later legislation. The law is practically the same for all of the provinces.

Definition of Will.

A will or testament is a writing by which the owner of property declares how he wishes it to be distributed after his death.

A Codicil.

A codicil is a supplement or addition made to a will by the testator. It may be written upon the same paper as the will or upon a separate sheet which may be attached to the will or left separate, although it is best to attach it. It should be executed in the same manner and with the same formalities as a will. When properly executed a codicil forms part of the will. There may be any number of codicils.

Forms.

A will may be written on any writing material and in any language but it is safer to have it written in English so as to avoid any errors in translation. It should be written legibly. No particular form of words is necessary although certain forms are almost invariably used but the wishes of the person making it should be expressed in very clear, plain and unambiguous terms.

Persons.

A man making a will is called a Testator. A woman making it a Testatrix. A person dying without a will is intestate and in such case there is said to be intestacy. A person receiving money or goods is said to receive a legacy and is styled a legatee. One receiving land a devisee and the gift of land is styled a devise.

Who May Make Wills.

All persons 21 years or over of sound mind may make a will. Those who cannot contract cannot make a will. A will made by a person in sound mind will not be made invalid by his later insanity.

To What Property Wills Apply.

All property, real and personal estate, i.e., lands, goods and chattels of which testator was possessed at death.

When Will Takes Effect.

At whatever time a will is made it is taken to be the will of the testator at death unless otherwise expressed.

Execution.

A will must be in writing and be signed at the foot or end by the testator or by some other person in his presence and at his direction. If the testator cannot sign his name he may make his mark. The signature may be placed at, after or following or under or beside or opposite the end of the will, so long as it is apparent on the face of the will that the testator intended by his signature to give effect to the document as his will; but the signature must be at the end of the will and no words or phrases or sentences following the signature will be given effect to. No seal is necessary. The will must be dated. If a testator were to leave two undated wills neither would take effect.

Witnesses.

The will must be signed in the presence of two or more witnesses both present at the same time and such witnesses must sign their names in the presence of the testator and of each other. No special form of attesting or signing by the witnesses is necessary. The address and occupation of each witness should be written after his signature. Witnesses should note carefully the mental and physical condition of the testator as proof of any attempt to take advantage of his weak, physical or mental state and by fraud or force to compel him to change his own intentions will invalidate the will. He should clearly understand what he is doing.

Creditors of the Testator.

Creditors of the testator and executors are competent witnesses (so also are beneficiaries, i.e., legatees under the will); but care should always be taken never to permit anyone who is to receive a gift or benefit under the will to act as a witness as doing so prevents such witnesses or the husbands or wives thereof from receiving any gifts or benefits under the will.

Revoking Will.

Marriage revokes a will unless the will was expressly made in contemplation of marriage. A will may also be revoked by another will or codicil, executed in the same way as a will whether such later will expressly revokes the will or not. A codicil must expressly revoke. Later wills always revoke all former wills. The will may also be revoked by its being burned or torn or destroyed by the testator with the intention of revoking it or by someone else in his presence and by his authority. No will once revoked can be revived except by re-executing it or by a codicil showing an intention to revive.

Alterations, etc.

Alterations or obliterations in a will do not render it invalid but if such alterations are to take effect they should be signed by the testator in the presence of two or more witnesses to show they were made before the will was signed, or the alterations may be referred to in a memorandum in another part of the will.

The residuary clause.

The residuary clause is a clause at the end of the will declaring who is to receive the residue or remainder of the estate after all creditors and legatees and devisees have been satisfied. If no such clause is included in the will the residue of the estate passes to the next of kin as though there had been no will.

Nuncupative Wills.

Nuncupative wills are those made by mariners at sea or by soldiers on active service. These need not be in

writing. They affect only goods and chattels. They may be proved by oral declarations made by the testator in the presence of others but sufficient evidence must be brought forward to show the testator's real intention.

Executors.

In selecting an executor a business man of sound character and, if possible, one acquainted with the affairs of the testator or a sound Trust Company should be chosen. If a woman is selected she is styled an executrix.

See chapter on Administration of Estates as to probating wills after death and obtaining letters of administration where there is an intestacy and as to the general administration and winding-up of estates.

Making a Will.

The form of simple will is given clause by clause, as follows, with notes where necessary. The clauses are numbered in the order in which they appear in the will. The will is one in the simplest form.

Will.

1. I,.....(name of Testator in full), of the..... of(insert name of city, town, etc.), in the province of(insert occupation of Testator) publish and declare this to be my last will and testament. I hereby revoke all former and other wills, testaments, codicils, testamentary dispositions and appointments by me at any time heretofore made.

2. I hereby appoint my dear wife.....to be the sole executrix of this my will.
or—

I hereby appoint A. B., of.....in the city of..... in the province of(occupation) and C. D., of the city of..... in the province of(occupation) to be the Executors of this my will.

3. I direct that my said Executrix (or Executors) pay first all my just debts, funeral and testamentary expenses and the legacies hereafter mentioned out of my estate as soon as conveniently may be after my decease.

4. (Note—Now come the clauses directing the disposal of the testator's property after payment of his debts. No particular form of words is necessary. The law will give effect to any wish if it is framed in words showing clearly the intention of the Testator. Particular phrases and expressions are generally used by lawyers and conveyancers in composing this part of the will and so far as possible these forms of expression should be used. The names of all persons who are to receive benefits under the will should be set out in full with address, occupation and relationship to the Testator so as to avoid all mistakes. A few clauses dealing with simple and uninvolved dispositions of property such as to wife, children and other legatees are given below. Wherever, however, the testator's property is of any considerable value and includes different kinds of property or where the legacies are many and have conditions attached the services of an experienced solicitor should be employed to draw the will).

(a) Where all is to be given to a wife or one person, say,

I give, devise and bequeath unto my dear wife.....
(or unto A. B., of.....the city of.....in the province ofoccupation, relationship (if any)); all my estate, real and personal whatsoever and wheresoever to hold for her, (or him) her (or his) heirs, executors and administrators absolutely.

(b) Where all is to go to children (if over 21) or several persons, say,

I give, devise and bequeath unto my dear children (name each in full) or if to brothers and sisters "unto my dear brothers and sisters"
..... (naming each in full) (or if to others not relatives describing each in full name, address, etc.) all my estate, real and personal, whatsoever and wheresoever to hold unto them, their heirs, executors and administrators absolutely in the shares following, that is to say (here state the shares each is to receive) or if all are to share equally say after "absolutely" "in equal shares."

- (c) If particular legacies of money are to go to children (if over 21) or others, say,

I give and bequeath to each of my children.....
 (name each) or if to others, "to A., B.,
 C., D. and E., F." (naming each with address and occupa-
 tion) the sum of \$.....(dollars) to be paid to each of
 them as soon as conveniently may be done after my
 decease.

And for the payment of the legacies aforesaid I give
 and devise to my said executrix (or executors as the case
 may be) all the personal estate owned by me at my decease
 and so much of my real estate as may be sufficient in addi-
 tion to the said personal estate herein to pay the said lega-
 cies.

- (d) If legacies are given to children under 21 years say,

I give and bequeath unto my dear children.....
 (naming them) (or my dear son.....or my dear
 daughteras the case may be) the sum of
 \$.....dollars.

- (e) Legacy to a church say,

I give and bequeath unto (name the church) at.....
 in the Province ofthe sum of \$.....
 dollars to be paid the treasurer for the time being thereof
 as soon as conveniently may be after my decease, out of
 such part of my personal estate as the law permits to be
 bequeathed to charitable purposes.

- (f) Legacy to Executors say,

I give and bequeath unto my executors hereinbefore
 named the sum of \$.....dollars each as remuneration
 for their services or the execution of their office.

- (g) Where particular articles or goods are given say,

I give and bequeath to.....(whoever is to re-
 ceive the goods) all my household goods and wearing ap-
 parel (or if other articles or goods, name them, describing
 them accurately so that they may be easily known and dis-
 tinguished).

Another similar clause would be,

I give and bequeath to.....(naming the legatee)
all articles of domestic, personal or household use and ornament, including my furniture, books, pictures, provisions, consumable stores and all household effects which at the time of my death shall be in or about or belonging to the house in which I may reside at my decease (or in whatever house the goods are).

(5) **Residuary clause.**

Note—Where specific legacies of money or articles or goods are given it is always necessary to insert just before the closing of the will a residuary clause which deals with the disposition of what is left of the estate after payment of debts and legacies. The clause is as follows:

All the rest and residue of my estate, both real and personal, whatsoever and wheresoever, I give, devise and bequeath unto(naming the person who is to receive the residue, who is called the residuary legatee) to hold unto him (or her), his heirs, executors and administrators absolutely and forever.

(Note—The will closes as follows):

In witness whereof, I, the said.....the testator
have to this my last will and testament set my hand this
.....day of.....19.....

,(Signature of testator).

(The attestation clause is as follows and must be written in full at this place):

Signed, published and declared by the said.....
the testator as and for his last will and testament in the presence of us both present at the same time who at his request and in his presence and in the presence of each other have hereunto subscribed our names as witness.

(Signature of witness).

(Signature of witness).

(addresses and occupations of witnesses should be given).

The following are forms of Codicils:

Codicil revoking will.

I,.....of the city of.....in the province
of(occupation), do hereby revoke
an instrument bearing date the.....day of.....
19.....(the date of the will) and purporting to be my last
will and testament.

(Signature of testator).

(attestation clause as above).

(Signature of witness).

(Signature of witness).

Codicil revoking legacies and substituting others.**Codicil.**

1. Codicil to the last will and testament of me (insert
testator's name, address and occupation) which bears date
the.....day of.....19.....

2. Whereas I have given in my said will legacies of
(\$.....) to C.D. (name of legatee in full) and (if a par-
ticular specific thing name it) to E. F. (name of legatee
in full).

3. Now I hereby revoke such legacies and devises
(if any) and in addition to the legacies given by my said
will and not revoked by this codicil I give a legacy of
(\$.....) to.....and of (\$.....) to.....
and (if a particular specific article name it) to.....(in
each case name in full the legatees who are to receive these
legacies) and in all other respects I do confirm my said
will.

(Signature of testator).

(attestation clause in full).

(Signature of witness).

(Signature of witness).

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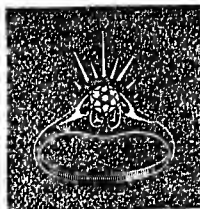
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